

NORTH CAROLINA DEPARTMENT OF NATURAL AND CULTURAL RESOURCES  
OFFICE OF ARCHIVES AND HISTORY



Transcript of an  
Oral History Interview with Heather McMillan Nakai  
SHE.OH.019  
January 31, 2020

## **Interview Information:**

Interviewer: Ellen Brooks

Interview Location: Robeson County, North Carolina

Interview Runtime: 02:58:48

Transcribed By: Matthew Waehner and Sarah Waugh, April 2020 and June 2020

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Collection: "She Changed the World" Oral History Project

## **Interview Summary:**

This oral history interview with Heather McMillan Nakai covers her general life history with a focus on her activism for Lumbee recognition. McMillan Nakai worked as a policy analyst and eligibility expert in the Indian Health Service's Division of Regulatory Affairs from 2006 to 2008. At the time of the interview, she was working for the National Indian Gaming Commission as a staff attorney for the Oklahoma region and pursuing recognition from the federal government of her status as an Indian due to her Lumbee heritage.

McMillan Nakai was born and raised primarily in Robeson County, North Carolina. She received her higher education degrees in New Hampshire (Dartmouth College) and California (University of California, Los Angeles). After her graduating from UCLA, she met her future husband, Benjamin, while in Washington, D.C. After McMillan Nakai passed the bar, she moved to Washington, D.C., and the two were subsequently married. The couple then moved to Robeson County, North Carolina, where they have remained and currently raise their daughter, Haazbaa'.

In the interview, McMillan discusses growing up as voracious reader, a Native student, and a high school athlete. She describes her experience growing up as her father was diagnosed with and passed away from cancer, and how her parents influenced her to pursue numerous educational opportunities. She details her experiences after court mandated desegregation of the schools in Robeson County during the 1990s, as the schools mirrored the triracial isolate found in the county. She talks about her college and graduate school experiences, and she details the experiences she had specifically as a Lumbee Indian navigating those experiences.

McMillan Nakai details her activism, with particular focus on her legal journey against the Department of the Interior to be recognized by the federal government as an Indian, individually. She discusses her intention of positively influencing the next generations of Lumbees to pursue education.

She describes the future she wants for her daughter, the importance of Native American culture and heritage, correcting the Lumbee Tribe's historical narrative, and her definition of success. McMillan Nakai continues to advocate for justice for the Lumbee Tribe and future Lumbee children, as well as continuing her full-time job for the National Indian Gaming Commission.

### **Biographical Sketch:**

Heather McMillan Nakai (nee McMillan) was born on May 23, 1980 in Lumberton, North Carolina to Margaret Jane McMillan and Herbert McMillan. She attended Jerry Ann School (1984-1987), Long Branch Elementary (1987-1990), Allenton Middle School (1990-1991), Littlefield Middle School (1991-1994), Lumberton Junior High School (1994-1995), Lumberton Senior High School (1995-1998), Dartmouth College (1998-2002; A.B in History and Native American Studies), and the University of California, Los Angeles (2002-2005; J.D.). McMillan Nakai married Benjamin Nakai, and the two had a daughter, Haazbaa'. Following graduation from law school, McMillan Nakai passed the North Carolina Bar and worked as a policy analyst at the Indian Health Services in Maryland. She currently works as a staff attorney for the National Indian Gaming Commission. In her individual capacity, McMillan Nakai is challenging the Department of Interior for its refusal to apply federal Indian law to Lumbee people.

### **Archivist's Note:**

Transcriptions reflect the original oral history recording. Due to human and machine fallibility transcripts often contain small errors. Transcripts may not have been transcribed from the original recording medium. It is strongly suggested that researchers engage with the oral history recording as well as the transcript. Timestamps are approximate.

## **Interview Transcript:**

Brooks: Today is January 31, 2020. This is an interview with Heather McMillan Nakai, who is a member of the Lumbee Tribe, a lawyer, a mom, and an activist. This interview is being conducted for the North Carolina State Archives She Changed the World oral history project, and the interviewer is Ellen Brooks. So we're just going to start at the beginning. If you can tell me when and where you were born?

McMillan Nakai: I was born in Lumberton, North Carolina in May of 1980.

Brooks: Okay, and can you tell me a little bit about your life growing up, and what your parents did, and things like that?

McMillan Nakai: Sure. I grew up in Robeson County. My mom, Margaret McMillan, was the sample maker for Jasper Mills, which eventually became Sara Lee, and my father is Herbert McMillan, who was one of the first Indian barbers here in Robeson County. And both of those factors are important to me because they've shaped who I became as a person. We lived away from my tribal immediate family community until I was about ten years old. When I was seven and a half my father was diagnosed with brain cancer, and after a two-and-a-half-year battle went on—walked on—which is how we, in our traditional culture, talk about passing. And my mother, being from a very traditional family herself, followed our tribal traditional patterns and moved in with his family—moved to his family's community—to raise us—me and I have a younger sister.

Brooks: Okay, and what did your father do for a living?

McMillan Nakai: He was a barber.

Brooks: So, tell me a little about what kind of kid you were.

McMillan Nakai: My family likes to joke that, when I was five years old, I declared I was going to be a lawyer. It's family lore and something I claim to remember, um, that my daddy told me that little Indian kids went to two kinds of colleges—and that everybody in our family was going to college—and there were two colleges I could choose from, Dartmouth or UNC Pembroke, 'cause that's where Indians went. And that shaped who I was going to be. My family will tell you I've always been a talker and an arguer. I think I'm just assertive. And they knew—they say they knew—I was going to be a lawyer from the time I was five, six, and seven, and I will say they were probably right at this point in my life [Brooks laughs]. Always very outgoing, very athletic, and always very assertive, always intent. I'm a reader. I've always been a voracious reader. As a child, in fact, often my mom would punish me by grounding me from whatever

book I was committed to at the time because I was that voracious of a reader. But obviously from the time I was seven until probably high school, things were a little—exciting—I don't know that exciting is the right word but—unsettled because my family moved, my dad was very, very ill for two and a half years. I had—my sister was born—was only three months old—when my dad was diagnosed. And so it was an interesting time to be a child. At the same time we moved, and that relocation was tough, obviously. I mean I got to go live with my cousins, which was awesome, but I had to switch schools. And I was going from a relatively diverse elementary school, which I had only been in for a year—two years—at the time, to a middle school that was still segregated—primarily segregated—largely segregated—'cause it's 1990. And one of the things that always surprises people who are not from Robeson County is that, until about 1990, the public schools in Robeson County were de facto segregated. And the state supreme court had ordered compliance with *Brown v. Board of Education* [laughs] in about 1988 or '89, and so the schools were desegregated that year. And they instituted a forced busing procedure, which meant that the year I finally relocated to my family's community, I went to that middle school that was largely segregated for one year and then had to go to another school for middle school again that was quote-unquote desegregated. And there was a lot of turmoil in the school system. My older cousins who lived all in the same village with me, basically—long dirt road with ten houses—really felt the brunt of desegregation, because they had gone from a high school that had been a small community high school to the large city high school, along with three other schools that had faced the same changes, and so it was an exciting time to be a kid.

[00:05:22]

Brooks: And when we're talking desegregation, we're talking essentially like white versus non-white schools?

McMillan Nakai: No, Robeson County is a triracial isolate—is the official social scientific term for what Robeson County is. It is comprised nearly equally of one third African American people, one third Native American people, and one third Caucasian people. And we had essentially two school systems in the county, which is what the court case was about, the quote-unquote rural system, which largely educated Indians, and the city system, which largely educated everyone else. And then because of the way Robeson County has been occupied for—since colonization—races do generally tend to live in segregated communities. And so as a result, with community schools, if you went to a high school or middle school, you would find that most of the students in both schools were of one race: black, white, or Indian, with occasionally—there were some schools in the rural system that had a slightly diverse population. Meaning that in my

pre-segregated middle school class there were some white kids—Caucasian kids—there was one African American kid I think in my fifth-grade class, but twenty Indians. So it wasn't anything mandated but it was so noticeable, particularly when you get to the western side of the county where it is largely an Indian population. And there was a 4A high school, which is like twelve hundred high school students, all of whom, short of one hundred maybe, were Indian. And for those one hundred kids who were not Native American—apparently not the best educational market. So, the supreme court worked that out.

Brooks:

Yeah. I think that's particularly interesting because I think most people think black and white when they're thinking school segregation. So you had three different communities all figuring out how to make things work. How did you feel, personally, about all the school moving that you did?

McMillan Nakai:

I think it was a traumatic time for a ten-year-old. My dad was my world, and I had lost a parent. My mom had been largely dependent on my father for a lot of things, and she had a huge lifestyle change, and that was hard for her. But I also got the opportunity to not be—I had an accent, according to my cousins, because I lived next to the highway in our first house, and in the second house I lived on a dirt road. I was the city kid, which is funny because where I was from was not the city. And so it was a lot of change and a lot of turmoil, and there were a lot of discussions. My cousins—I got suspended with them—a significant number of my relatives were suspended the first week of school because there had been brawls and riots at the desegregated schools, and it's hard to imagine that's 1990-ish, um, '91, when it very much felt and looked like what I was learning about from the sixties and Martin Luther King and desegregation. So, as I mentioned, I was a voracious reader, so probably I was more aware of the enormity of what was happening than your average ten-year-old. And I read well above my grade level, and I'm a history buff and always have been, so it was eye-opening, I think, to really understand what was happening.

Brooks:

Um, and you said you were a history buff. Was that your favorite subject? Did you have favorite subjects in school?

[00:09:36]

McMillan Nakai:

Yeah, I would say history was the go-to for me—um, social studies. My dad had gone to the army and come home on the GI Bill and had had this dream of going to college, and North Carolina wasn't a great place for that, even when he came home in the sixties. And so he had not realized his dream of truly academic education, and he, I think, in some ways resented that, but never gave up his love for learning, and so he had copies of *The Iliad* and all of these advanced historical novels and things that—you

know, the classics—he believed in reading the classics. And so, I could read by three, and he made it—that's what we did. And I just—I love it. And the 1980s were, for Lumbee people, very engaging. I'm from—as I mentioned, my mom is from a very traditional family. My maternal uncle is our ceremonial leader now—it's called fire keeper—Earl Carter. And so, being Lumbee, being engaged in my culture and involved in my culture is an inherent part of who I was. It's not a thing I—I think I've only really begun to appreciate how unique what I was doing as a child is, even among my own people. Not a lot of kids were doing what I was doing.

But that time period was also when Julian Pierce was assassinated here in Robeson County. He was the first American Indian running for the bench here in Robeson County—was running for DA at the time—and he was running to unseat a long-held position, and it was politically tumultuous for everyone, and that's been a huge part of North Carolina history. He was assassinated about the same time my dad was sick. The Lumbee Tribe had submitted its petition in 1985 for federal recognition, and so that was a lot of discussion amongst the tribe, and so that really all shaped—I mean, I think most people can understand that my mom had a new baby, a very sick husband, and a seven year old who's always been belligerently independent. And so, reading the newspaper and understanding what the older people around me were—I had been an only child for seven years—was something I did a lot. And so, the fight for Lumbee recognition, which Julian Pierce had been working on the petition, and then he's assassinated, and that created a lot of turmoil in Robeson County. It was all happening at the same time my dad gets sick, my sister is born, my dad dies, we move, there's the takeover of *The Robesonian*—because they were trying to force an investigation into Julian Pierce's murder—the FBI comes to town, and it shaped who, I think, I became because I lived every day in a world where activism and, um, justice was on the tip, I think, of everyone's tongue, whether they knew it or not. The grandmas at the flea markets were talking about what was going on—aunties in church and elders—everywhere I went, and I spent a lot of time with my grandparents in the summers in particular; my mom was working. And so everywhere—I mean, my grandpa would, during the summers, take us to the gas station to get peanuts and a Pepsi-Cola in a glass bottle—we thought it was the best thing ever—and you would hear the old men standing around talking about what was going on, and so it seemed normal to me. It normalized a fight for justice, I think, and so naturally assertive Heather had plenty of things to latch on to, and Lumbee recognition was certainly one of those.

Brooks:

And did you talk to anybody that was like around your age about any of this stuff or your thoughts and feelings about what was going on, when you were a kid?

McMillan Nakai: My mama jokes that I would talk to the wall [Brooks laughs] if it were near me, and there was no one else to talk to. So, I think if you talk to my classmates now who knew me then, they would not be at all surprised where I went and what I became. And so I must have been talking about it. I'm certain I wrote papers about it, you know, every essay that was assigned probably trended towards one of these [laughs] topics. And so, in those same first few years—I would say, by 1992, I must have already been the person I became. Because after Julian passed, Linda Locklear took over a lot of the work on Lumbee recognition. It was then that she argued sometime between 1987 and '90, one, she argued her first case before the United States Supreme Court, and she won, and I recently read this quote that said "If you can see it you can be it," and so probably about then is when I realized I was not just going to go be a lawyer, I was going to be a *lawyer*. That if it didn't get worked out by then, that's what I would do: go fight for Lumbee recognition and Lumbee justice. So I would say yes, probably someone—plenty of people [laughs] probably knew what I wanted to do.

[00:15:34]

Brooks: And just to back up a little bit, how did your parents meet, if you know?

McMillan Nakai: I actually don't know exactly how they crossed paths, *per se*. I think my mom had already started working somewhere, and he was a—did my aunt and uncle meet first? I'm not sure. One of—somebody she knew—knew him, and they crossed paths, and my mom had graduated from high school. She's younger than my dad. Dad had come home from the army and had started working, and my grandfather was a pastor and had alternated between here and Mecklenburg County, and he'd gotten a new station up in Charlotte, and they were all moving, and my mom and dad had gone on one date, or maybe two dates, but on the third date when my dad brought my mom home, they were leaving, and my grandpa said, "Well, say your goodbyes," like, "We're moving to Charlotte," and my dad was like, "She can't move to Charlotte. I really like her," and my grandpa said, "Well, we're moving to Charlotte, and so is she." And she had gotten into Queen's College in Charlotte and was gonna to start a course there, and, um, she's a math whiz. And so, my dad was like, What am I supposed to do about this? He'd not had much trouble with women, as I understand. He was a good-looking fella, and smart, so, and assertive, like me. And my grandpa said, "Son, I don't have time for this. We're leaving," and he was like "You can marry her or say 'bye' those are your choices," and my daddy's like, "We've only been on three dates. We can't get married," and my grandpa was like, "Okay then, bye." And they moved, and apparently two weeks later, my daddy went to Charlotte, got her, and they went and got married. And that's all she wrote. Apparently about three dates in.

Brooks: Wow. Did they both grow up around here?

McMillan Nakai: They did. My mom had gone to Fairgrove, which is out near Fairmont. My daddy went to Magnolia. They are—the tribe is big enough that—they are sort of not—there are areas, groups. And so my daddy was from a different place than my mom; they were wildly different. And my two families are different. So, um, yeah, so they had not known each other growing up. And they got married, and that was all she wrote. My mama was done for. They had been married ten years when they had me and had largely given up on the effort and were ready to adopt and—surprise.

Brooks: Yeah. And then your sister, you said, seven years later? There's seven years difference?

McMillan Nakai: Yeah. Same problem: had a hard time getting pregnant and seven years later, there she was.

Brooks: Um, so anything else about your kind of growing up, anything, like, pre-college, that you think is important that we touch on?

McMillan Nakai: I think my mom saw in my dad that what made him different—what made him stand out amongst all the other people she knew—was that he had gone away and learned things and had gone to Germany and had been all over in the army and that that's what made him the man she admired, and that's what she wanted to convey to me. And having relocated to Allentown, which is where I grew up, she knew she wanted to make sure that I got a very diverse experience as well, and she did everything she could to make sure I understood that I was obligated to go to college, and that I was obligated to go away. And so I think one of the unique things about me growing up is that my mom made sure that every summer I had an academic education—academic experience. And so I spent the first summer away in sixth grade at UNC Pembroke for two and a half weeks or something, and by the time I was in ninth grade—the summer after ninth grade—I was gone the entire summer. So, every year there was some—often math and science, STEM, which is weird for me now looking back—but always doing something to further my education to ensure that I didn't—no idle hands in my mama's house. I farmed with my grandparents when I was home, and I think all those things really shaped who I was and who I am.

[00:20:13]

Brooks: What type of farming did they do?

McMillan Nakai: Subsistence. My mom and dad were the first generations of their families to work outside the home, off the farm. And so when I was growing up, we always joked I had ten acres of corn—we had ten acres of corn. My grandparents had ten kids total, nine in the immediate family, and they all had from—I have seventeen first cousins, and I was the baby until my sister was born. Well, I have one other cousin who's the same age as my sister. And so they displaced me as the baby. But we had ten acres of corn. Everything we ate, we grew. I never, to my knowledge, had a canned vegetable until I was probably twelve or thirteen. And I can remember, like, I'd never been to a grocery store because it just isn't what little Lumbee kids did, on our farm anyway. So there was some tobacco if you needed to make money for school clothes. And just a wholesome—you would go to church on Sundays and Wednesday nights, and run rough and rowdy in the summers, and go to school otherwise. And stayed very busy. I was an athlete, so by the time I went to high school I was a four-sport varsity athlete. Straight A's, I mean I graduated with better than a 4.0, but I was also rough and rowdy which always surprised people when they would see my grades or—um I can remember in the ninth grade, which is the first time I was subjected to busing—ninth grade. Now it doesn't—well, even now my husband complains how far it is from here to my mama's house, and my junior high is just down the road. So I had to ride the bus an hour and ten minutes each way. And I was an athlete, so I'd have to stay after school, and it was always tough. It was a lot of work, but I loved it, and so my mom did what she needed to do to make sure I had it.

Brooks: So you felt like it was worth it? The commute?

McMillan Nakai: I do. I do. I don't know if the commute was worth it. I don't think Robeson County thought the commute was worth it, which is why they ultimately stopped doing that, and moved the ninth grade to the high school, which is much closer to where I'm from. And it was shocking, it was the first time I'd not been a majority—in the majority when I was old enough to be aware. So, from fifth grade to ninth grade I was—nearly everyone around me was Indian. And then I went to ninth grade, and we were only one third of the population. And that was shocking, even then. And because of the way the dynamics worked, it was a rough transition for everyone involved. The other students in the county who had gone to eighth grade at that school, and we were the only students who only went to ninth grade there, and sports were eighth and ninth graders, and so then we came in and displaced members of the t—for example, we got recruited for volleyball, and volleyball became the sport that I loved more than anything—and we displaced, the kids from my school and Magnolia—although I don't know that there was anybody that played volleyball from Magnolia—but the two girls from Littlefield where I transferred from displaced two members of the volleyball team. And that was hard for

everyone, 'cause then their teammates didn't like that. So it was a rough transition all the way in, I think.

And at the same time, someone gave us—there was an SAT program where you could take the SAT in the ninth grade and it was like a test run, not the Pre-SAT, but an actual SAT, and I think the Indian education officer or someone signed me up for it and said, "Well, you like to read. You'd probably be pretty good at this," and I took it then. And when the scores came back, everyone around me was dumbfounded. Because my reading score was perfect, and—"cause I'm a voracious reader there's like not a word I didn't know in the ninth grade [both laugh]. And I'd done well on the math section. In fact, I never took the SAT again. I took it in the ninth grade. And that really impacted how my classes—but I knew who I was, and I didn't want people to change how they felt about me because, in my very rough way, I was like, Yes I can read why does that surprise you? [Brooks laughs]

[00:25:03]

And so I would be in honors classes and AP classes and most people wouldn't know unless they were in those classes with me. I would be one of only a few Indian kids in the class, or the only Indian kid often, and I was okay with that, with people not knowing. And so, I kind of lived a dichotomous life. I was an athlete, and from Allenton, and a Lumbee girl, and secretly also an AP honor student, which in 1995, there was a distinction.

Brooks:

What do you think you learned from that period, with the integration of the schools and the figuring out who you are amongst people who aren't like you?

McMillan Nakai:

Coping mechanisms. I think the constant change and turmoil set me up to be able to move and experience—that sets me up to be able to experience and learn new things. And as a result by the time I was—I think my mama would tell you—by the time I was in the eighth grade, she could say, "Oh, I'm going to send you to this summer camp," or by then I was coming to her saying, "I think I want to go to Colorado for the summer," or, "I wanna go to"—and I was thirteen years old and that really impacted who I became. And so I've never shied away from, Hey you want to go do this, or, This is a possibility. How do you feel about going to London or studying abroad or taking a job in Spokane, Washington for the summer two weeks before we want you to leave? Never hesitated, never wondered where I would stay or how I'd eat or drive or get anywhere, I would just go. And that's really shaped my career.

Brooks: So coping for you have been kind of like new experiences? Moving around trying to get as much new experience as you can?

McMillan Nakai: In all of those experiences early on, there was adversity. And my former client who has just moved on as a presidential appointee described me to someone as the most tenacious lawyer he's ever had. And I think that tenacity comes from constantly having to cope with change, obvious turmoil, difficult circumstances, adversity, but just saying "Okay, well those things exist in the world. They likely will happen, and how is that going to affect me? Am I going to stay in place?" And I hear it often said that people from here don't leave, and I jokingly say it sometimes that the families who lived here three hundred years ago still live here. So leaving is unusual. And it's a thing I actually—if you had to list twenty things I'm an activist about, one of them is telling kids to get capital "P" Perspective. Not just have a perspective, but get perspective from places and things and people, because that helps you see where you are clearly. Like please go away, but please come back. And so, I think all of that change and all of that turmoil really taught me, gave me the tools I need to be able to go and do all of the things that would come later.

Brooks: Um, so then your next move is onto college. So I have an idea, but if you can talk about how you chose where you were going to go and what you were going to study?

McMillan Nakai: Again, my dad told me when I was five, that Indians went to two schools: Dartmouth or UNC Pembroke. And when I took the SATs in the ninth grade, that puts you on college mailing lists, and I went away to summer camp that summer between ninth and tenth grade, and came home, and I couldn't get into my bedroom because we had gotten flooded with fliers and videos and T-shirts whatever from like, There's this Native American person who checks every box, and by the way her SAT score's decent. Better than decent. Come to our school. And that old rule came back to my head, and Dartmouth was one of those schools. I had worked very hard academically, had taken every AP class my high school offered that I wanted to take—did I skip AP Chemistry? I'm not sure [Brooks laughs]; I'd have to look at my transcript. Um, and even invented basically—I had an independent study AP US History because I maxed out on AP classes. And so, I was more than academically equipped to apply to all the top schools, so I did, and Dartmouth was, after school visits, my mom went and visited some schools for me because I couldn't do them all.

[00:30:00]

When I went to Dartmouth I was—I visited Dartmouth. They have what's called the fly-in program, so they flew me up there the fall of my senior year, and I fell in love. I was unequivocally committed. It snowed. I don't

know that it had—it snowed one time, maybe, in my life. And I went to Dartmouth for a weekend, and it was the first snowfall of the year, and it just was magical. And they have a strong Native American studies department. It had everything I could have wanted in a college, and it was in a small town. Coming from Robeson County, like, perhaps going to a big city would have seemed like a dream, but I'm from a farm. And I thought that they had delivery pizza was amazing, and that was as big city as I needed. And so Dartmouth was just ideal. It was a good transition. I think I got a lot of farm girl common sense on my shoulders, and so I just knew. I had visited Harvard. We had gone any number of places just to get a sense—and they just did not—it didn't—they weren't speaking to me. Dartmouth did. And so, there I went with no coat.

Brooks:

Oh. Hopefully you got one pretty quickly [laughs].

McMillan Nakai:

Well, they don't sell winter coats here in Robeson County, not real winter coats. I had my high school letterman jacket, which I'd probably worn necessarily like twice in my life, and I went to Hanover, New Hampshire, which is a small town, and I can remember they invite you to do—that was the year that Hurricane Irene—it was 1998, and North Carolina had been hit by Cat[egory] three, Cat[egory] four hurricane, and we hadn't had power for almost a month. And I had to go to school with dirty clothes. And Dartmouth does this thing called freshman trips, and they advocate that you do these so you get to know your classmates, and I got to campus, and everyone said, "Hey you didn't go," and I was like, "I don't understand, did you?" And they were like, "Yes," and I was like, "Why?" And they're like "Well this is what we do at Dartmouth," and I said, "I'm pretty sure my mama's sending me to college so I don't have to sleep outside ever. It's disrespectful to do so voluntarily." [Brooks laughs] And they were like, "Oh my goodness, Heather," and I was like, "Unh-uh. Camping is not a thing." So I didn't go camping.

We had to do my laundry at a hotel in Connecticut or somewhere, 'cause I didn't have any clean clothes for college. And—I had a growth spurt, four and half inches in college, I came home a whole different person, and I came home with a coat. Dartmouth, New Hampshire had the worst blizzard in twenty years my freshman fall. And I lost my eyelashes because my eyes were constantly watering from the new environment. And it was a blizzard, and I rubbed my eyes, and broke all my eyelashes off. It turns out human beings are meant to have eyelashes because you look weird when you don't have them [Brooks laughs]. And I came home and cried, and I said, "It's so cold," and I did get a coat. Well I went and bought a coat, and my friend from Wisconsin—my best friend is from Wisconsin—she had just become my best friend then—and she goes, "Did you get a coat?" And I said, "I did," and she said, "Show me," and I was like, "This is it," and she said, "That's a fleece. That's not a coat. Let's go."

And we went back and found a real coat. And I was like, "We're never going to need this," and she was like, "You're going to need this in three weeks," and I did.

There was a senior from Columbia, South Carolina who was Cherokee and originally from North Carolina and who had taken me under her wing. And we flew home together, and I have an uncle who lives in Columbia, so I flew into Columbia coming home from Dartmouth that Christmas break, and I got off the plane shedding clothes, and my mom was like, "What are you doing? How far is this going to go? Keep your clothes on." [Brooks laughs] But it was so hot, I think that we left a blizzard—barely got out—and got here, and it was seventy degrees. And I was crying, and I said, "I don't want to go back. It's cold and there are no Lumbees, and no one knows what a Lumbee is, and I'm over it," like, "I did it. Yay." And my mama said, "Oh no. No, no. [laughs] Someone's paid all that money for you to go there"—Dartmouth is one of the more expensive colleges in the country—"And we don't quit, you're going back." And I was like, "I can't go back," and she was like "Well you can't stay here. You're going." And so I spent that Christmas break gearing up to go back.

[00:34:55]

And it eventually became the best experience I could have had, but it was cold—very cold. Enough so that, when it was time to apply to law school, my first question to every law school was, "Does it snow at your school?" Because if it does, I can't go there. The end.

Brooks: So after four years in New Hampshire you were like, "I need to be in a warm climate again."

McMillan Nakai: Yeah, I can't do this. I visited with the dean from Yale Law School, and she said, "Heather, have you thought about coming to Yale?" and I said, "No." And she—it was the number one law school in the country—and she said, "Well why not?" And I said, "Because it snows at your school," and she looked at me like I was crazy [Brooks laughs]. And she's like, "That is the most absurd thing I've ever heard," and I was like, "Well I'm sorry, dean, but I've learned two things about going to law school. In the first year, first year law students have the highest rate of suicide. It's a real concern in the world, and I'm not going to pretend that I'm somehow immune to what happens to lots of people in the world," and she goes "Okay." I said, "And seasonal depression disorder is a real thing too. I can't take that risk of having both of those problems, and I'm clear that I don't like the snow. So, if I'm going to confront the hardest thing that I've ever confronted academically, I can't also be cold. Sorry." That was the end of that.

Brooks: This was very self-aware of you. It makes a lot of sense [laughs].

McMillan Nakai: Yeah. I was clear that it was cold.

Brooks: If you're going to do something hard you should find the right environment so that you can at least be comfortable.

McMillan Nakai: UCLA was the answer. It never snows there [laughs].

Brooks: Yeah, yeah. And before we get there, what was it about Dartmouth that, you know, it became such a great experience, besides the weather?

McMillan Nakai: Dartmouth has the strongest Native American studies program in the country for undergrads. Dartmouth had originally been founded for Native people, and in 1970 it had recommitted to that educational endeavor. So they were aware that there were native students on campus, and they had a real commitment to Indian education. And there was a very strong native community there, which compared to other communities won't seem like a lot, but in comparison UNC Chapel Hill is in North Carolina—this state has one of the largest Indian populations in the country—had, when I was a college freshman, I think, on campus maybe ninety people in a school of twenty or forty thousand. I mean, a huge school. Dartmouth had more than that. Had a hundred and ten Native students my freshman year of undergrad, and we only had four thousand students, campus wide. So it was a huge Native population, comparatively. And those are probably the two biggest Native populations at the time at any institution in the country. And the Native American studies program there is amazing, and the history degree there is equally amazing. And it's a small community. It has a massive endowment, and so the resources and opportunities presented at Dartmouth really shaped—if you take advantage of them—can really give you an experience you can't get anywhere else.

And so one of the things unique about Dartmouth is it's on the quarter system, and it gave me the opportunity to be home with my friends when they were in school. And so I didn't really feel like I was missing everything that was happening here. Because they would be in school a whole month before I started, so I'd have a whole month—in fact, I have a friend who became my friend as an adult, and he only discovered, like, three years ago that I never went to UNC Pembroke. Because I'm in every yearbook [Brooks laughs] that happened while I was in college, because I was there during homecoming and all kinds of things because we hadn't started school. When they—not desegregated, what do you call it—when they integrated women into the campus, they didn't want to reduce the number of men who went to the institution, and so they went to the quarter system and made it mandatory for you to go to school your sophomore summer to have room for women to live on campus. And so as a result,

they still have that. And it's an academic benefit because you're allowed to take off a term that other people would not be able to, so you have a less competitive opportunity for internships, and I took full advantage of that. I worked for the Indian Education Program here my sophomore winter. Became an Alpha Pi Omega during that sophomore winter when they were in school. Alpha Pi Omega is the first national Native American sorority. It was founded at UNC Chapel Hill. And I'm probably the first generation of women who grew up wanting to be an Alpha Pi Omega, but they weren't anywhere but here in North Carolina.

[00:39:53]

So that semester off let me work in the school system when there were students, with, you know, educational professionals and other folks, and let me pledge Alpha Pi Omega at UNC Pembroke. So it gave me a wonderful experience and being able to do all the things I dreamed about, wanted to do, and still got the best education at Dartmouth I could have received anywhere. Um, really made that moment. I made good friends, had a true community there. A place, an institution, that would support any work I wanted to do financially. If I wanted to come home and do research, they would support that. Um, we did a—and there were—it just felt like there were always opportunities to do things that I know my peers were not doing at other institutions. We did a program on cross-sectionality and intersectionality of the races at contact and during—and Indians were included in this study, and that was unique. Um, and so we were on NPR, and we hosted this big academic conference. And that was amazing. And there were Lumbee voices in that conference because I had worked on the conference. And that—I don't know that I would have been able to do that. And every four years the New Hampshire primaries become huge in the presidential election, and you can't trade that experience. Because they're held at Dartmouth. And so, you go—you get firsthand experience with the Secret Service as a college student, which most college students don't get to do 'cause you can't get mail for a week, during the debates, um, 'cause the debates are held where our mailboxes are [laughs].

Brooks:

Ah [laughs].

McMillan Nakai:

[laughs] So you can't get mail! Um, and you meet all the presidential candidates—one on one, often. And it had the—I'm sure this happens a lot, at Dartmouth, but you become the face of Native America for every presidential candidate, 'cause they come to the Native American house like, "Here's the Native American population!" And it's, like, you and three other people. It's not an experience you can change—that I would trade for anything. So.

Brooks: And you graduated with a History and Native American Studies, like, dual degree?

McMillan Nakai: Dual degree.

Brooks: And with your Native American studies classes, what was the typical make-up of the other students in those class?

McMillan Nakai: I would say they're pretty diverse. Because, um, American Indian studies, Native American studies at Dartmouth is not just the topic of Indians. The things that happened to Indians happen to everyone. And so if you're studying policy, educational policy, or health policy, or land policy—even if it's American Indian land policy, or Native American health policy—it's health policy. And so if a student of whatever variety wanted to learn about health policy, there aren't that many classes you can go get hands-on experience. And, in Native American studies, you're going to meet the policy makers. And, because Dartmouth has graduated so many of those policy makers, policy leaders, they come visit, and we would have—it's the kinda class you would wanna be in if you know what you wanna do. And so, um, I would say they're pretty diverse. They were always pretty diverse. So, um, always diverse in thought and diverse in experience.

Brooks: Did you have any significant mentors—either professors or other people on campus?

McMillan Nakai: Certainly at Dartmouth, the professors—they're small classes—and the professors there are invested in your development. And so, the Native American Studies department certainly had professors, Professor Colin Calloway, and Professor Bruce Duthu, Professor Dale Turner. They're the people who shaped—Professor Calloway is a colonial historian and focuses largely on Eastern colonial experiences with Indians. Um, so certainly taught me a lot about how to think about documents and histories of Native people on the East Coast. I couldn't have made that up for a better person to teach me to do what I ultimately do now. Um, Bruce Duthu is a Houma legal scholar. He's a lawyer, um, taught at Vermont Law School. He's a Dartmouth alum, Houma tribal member from Louisiana, which has its own complicated legal history with the United States, so understands—understood the Lumbee experience, and being able to arrive on campus and there being somebody there who already knew—I didn't have to explain what it meant to be Lumbee—was an amazing opportunity.

[00:44:53]

And Dale Turner is a political theorist, and I took—he was my freshman fall. I took his class, which looking back was not the best idea I ever had,

but I learned about an activist. When he teaches about Native American political theory, it's to teach you about political theory, and so I learned about Frantz Fanon and the African Nationalist Movement, and things that I just would never have learned without people like him. And I teach a course at UNC Pembroke, and my students hear a lot about Frantz Fanon and they're looking at me like, What does this have to do with being Indian? And I'm like, "The nationalist movement is building a nation no matter who comprises that nation." And so those professors really shaped my experience, and on the other hand I was in the history department. I worked for them as a student intern.

Professor Marysa Navarro teaches Argentinian history, Spanish, Latin American history. I learned to read Spanish because she insisted that I edit her work. She's the world's leading expert on Evita and had been the first female professor at Dartmouth. So she was an activist of the infinite variety but would just tell you she's a historian. Professor Lagomarsino—I mean they all took me under their wing. I ended up doing the foreign study program for the history department, and they always expected the most of me personally, demanded my best, and pushed me harder than I had ever been. I can honestly say, and with all humility, that I don't know that I'd never been pushed academically. And going to Dartmouth, I was pushed in a way that I could not—I was competing against thousands of other Heathers, and that was—it really pushes your limits. And when there are professors there who will help you with that, and guide you, and test you, you really learn. I mean, and I had a—I make my place where I go, and I was very active in the campus community.

I brought Alpha Pi Omega to Dartmouth. I was the first Alpha Pi Omega who pledged the sorority who was not a student at a North Carolina school, and we're now nationwide. So I like to take my little part in that movement. And so by my senior year I was on the president's advisory council, and so was very active. I was leading on campus in the same way that I'd like to believe that I will always just take a stand, and so it was very formative in how I was going to—I loved it. I built a home there.

Brooks: And you say you did a study abroad program?

McMillan Nakai: I did.

Brooks: Where did you go?

McMillan Nakai: I went to London and studied the colonization of Belize because I wanted to do—I mean, I was a Native American studies major and history major—but I had learned in that very first freshman fall that a comparative analysis is really helpful in understanding history and understanding experiences. And so I did a paper on Belize and studied the colonial

experience in Belize from the colonialist perspective. And so used some of the national archives in London, in England, to work on that and really understanding how colonization is experienced on the other end. How do they see it? What is it like to be on this other side of the pond, if you will, and think about colonization? And it was such a unique experience.

And the hardest parts of being at Dartmouth was it was the first time—not the first time—I had ever been in a place where nobody knew what a Lumbee was, but it was the first time I was equipped—fully equipped, I thought—to respond to, "Well, what's a Lumbee?" And then going to London, where people have a very clear understanding, belief system, about what Indians are. And then they met me, and they would be like, "But you're not an Indian" and I was like "Sure I am. I don't know who these people on your wall are. That's cartoons. That's not real We're real people, and this is what we're like."

And I had grown up—my daddy was a bowler. I grew up in the Lumberton Bowing Center, and eventually that was my first job. And when I was in London, I discovered they also bowl. And I bowled with two members of Team England while I was in London. Again, the coping—making homes wherever I am—I was only there four months. I had a bowling team. We would get in this van and would leave the other Dartmouth students, which is weird. Because a professor travels with you, and you all live together, and I would just get in this van and be going all over England and go bowling. And people would be like, "So, what are you doing?" [Brooks laughs]

[00:50:00]

But we got to go to Spain. Because there are other Dartmouth abroad programs in other countries, and so you would have friends who were in those other programs, and you would go visit on your breaks. So I was able to go to Spain. It just—I had a passport. I was the first person in my family to have a passport. That was weird. Um, it just—yeah. It's been an interesting journey. But that paper really helped me grow as an academic and understand the first time I did archival research, primary document research. And learning those skills really helped. It just really helped to understand how colonizers thought about the colonization process. It's unique. And Belize is an interesting study in and of itself, because they speak English, and it's weird. So, there you go.

Brooks: Yeah. So obviously you knew you were going to go to law school. We talked a little bit about how you chose UCLA. Was it immediately from Dartmouth to UCLA?

McMillan Nakai: It was.

Brooks: You didn't take a gap year or anything?

McMillan Nakai: There was none of that. My mama worked in a factory, and the other thing that happened while I was in college was NAFTA. And Robeson County—I learned so much about Robeson County in college. One of the other classes I took my freshman year was a social sciences class, and I discovered the term triracial isolate for the first time, knowing that Robeson County was one of them, because it was in my book, which I thought was so weird because no one has ever heard of Robeson County. And Robeson County was one of the three most industrialized rural counties in the country. Everyone I knew had a job. Everyone I knew had health insurance provided by that job. The Lumbee experience, I learned, was so wildly different than other the rest of Indian country because when we turned sixteen, it was expected that you get a car, or shortly thereafter get a car. It wouldn't be an awesome car, necessarily, but it would be a car, and it would work. And you'd be a kid, and you would not be able to get your own insurance. For the most part, that was a common experience. I was from a single parent house. My mom worked in the factory. We were poor compared to the median in the country, and at Dartmouth I was clearly one of the poorest kids there. I went to school with a Rockefeller, Sonny Ford III—Thomas Ford III, sorry—the people who own Ford Motor Company.

Brooks: Sure [laughs].

McMillan Nakai: Meryl Streep's son was in my first Native American studies class. So it was me and those people. And so, NAFTA has passed. And I can remember thinking like—never having understood much about federal policy other than Lumbee recognition—and suddenly, we went from less than three percent unemployment here to greater than seven, nearly overnight. And within five years, twenty three percent unemployment. It was a shock to the county. And my mom, who had been working since she was seventeen years old, was suddenly unemployed. She's a master seamstress. She'd made most of my clothes growing up, I mean—is amazing. In fact, when I was in my senior year, her company wanted to teach her Spanish and move her to Guatemala. And she was like, "Move to Guatemala? Where is that?" And I can remember she called me to say, "Where is that, exactly? Is that unreasonable?" And I was like, "It's a foreign country. [Brooks laughs] Yes, it's unreasonable." But all of this change was happening, and so when it was time to go to school, I knew what I wanted to be. In fact, that winter when I worked here, I worked in Robeson County for Indian Education and Mr. Bruce, who worked in Indian Education, said, "Heather, what are you going to do?" And I said, "I'm going to go fix the Lumbee problem. I'm going to be a lawyer, and I'm gonna fix the Lumbee problem," and he laughed and said "Okay then,

you go ahead. Fix the Lumbee problem." And so, I knew what I wanted to do. So when I graduated—I was getting ready to graduate—and had no idea how I had gotten into UCLA and had gotten nearly a full ride, and I knew it didn't snow there, and I had gone to visit. And when I got out of the airport, I called the recruiter who had brought us out and said, "I'm sorry I'm going to need you to re-book my ticket," because I had gotten out at LAX, and you can see from the terminal out over the town, and I knew I could not go from Hanover, New Hampshire—from Allenton to Hanover to LA.

[00:55:08]

I was terrified, and I was having some East Coast-West Coast equilibrium issues. And I was on the verge of tears, like, "I can't leave this airport. This is madness. People don't live here, right?" [Brooks laughs] They convinced me to leave the airport. They came and got me, got me to the hotel, because I was like, "I can't do this," but they have a great federal Indian law program, and by then I knew economic development—believed economic development—was the solution to all Indian problems. California was a good place to work on that. But I had actually no concept of how I was going to move me and the stuff I didn't own to LA, to an apartment, and feed myself. It all seemed quite dramatic for everyone involved. Because my mom was unemployed basically. My sister was in high school, and that was it. The Dartmouth alumni are amazing, and one hired me in May, a month before graduation, and gave me a job, and got me to the West Coast, and fed me and found me a place to live, which gave me time to figure out—A, to learn to live by myself, which was weird, and to figure out—and to have my family help me figure out—how I would get my stuff. So I had a cousin drove most of my stuff out. An uncle drove my car, and he came out and helped me buy a bed, [Brooks laughs] and so all the things that you just don't really think about. And no one in my family had ever gone—I mean, going to Chapel Hill was a huge deal, and here I was going to move to California. We did it, but yeah, direct, virtually.

Brooks:

And you were twenty-two, twenty-three at this point?

McMillan Nakai:

I turned twenty-two the last week of school, of college, I turned twenty-two. Yeah. So it was LA at twenty-two.

Brooks: Yeah.

So once you got settled-ish how was that? How did LA treat you?

McMillan Nakai:

It was—I don't know that I ever really got a chance to get settled. The first week of school my grandma died, rather unexpectedly. Actually the first day of school, and so I had to literally get off on the bus on the first day of school—the public bus—get off the bus at the next stop. My mom called

me just as I got to the first stop of the bus. I had to turn around and walk back to my apartment to pack and go home. When I got back to LA my contracts professor tried to convince me that I need to delay a year because I had missed the first week of school, and, "No one can survive missing the first week of law school," she said. And I looked at her blankly, and then I went to the dean's office, because, as I said to the dean, "I don't think you understand. I'm from North Carolina. If I leave here now, I can't come back. And if I leave here now, I gotta go to work. And when I got to work, this free wheeling and dealing taking time off thing doesn't happen in my family. Like, I won't come back, and that's not a thing, so I'm not leaving. Are you making me leave?" And she said, "Well, no." 'Cause I just paid twenty-two hundred dollars to get this apartment over here, that was more money than I've ever spent on anything. I bought a car for less than that [Brooks laughs]. I can't leave. That's not a thing. And she said, "Okay." I was like, "So I will do whatever I have to do, but I can't leave. That's it. So do I have to leave?" And she said, "Well, no, if you're sure. But Heather, you're really behind now." So I was like "Oh no, I've done all of my reading. I'm ready. We can go argue about contracts right now if you want to." And I stayed, and my classmates were very supportive, and I had built a little bit of a network there, and I stayed. And law school is hard, and law school for Native students can be particularly hard, because the classes that you take—it's hard to imagine, but the law of America is built on federal Indian law. The very first property case in the United States—you take real property your first year in law school—the first property case is an Indian law case, *Johnson v. McIntosh*.

[00:59:55]

In criminal law, which you also take that first year of law school, you talk about the reasonable man standard and what that means for how we evaluate crime in this country. And when you read the cases for how the reasonable man standard was developed under American law, one of the cases is about a Native family who did not take their child to the dentist because they were worried he would be taken permanently from their home. And I'm in a class of a hundred people, ninety people. There are two Indians in my class—might have been three of us. We might have all been in the same section, actually. No, two of us. Two of the three of us were in the same section. And I suddenly found myself confronting being the only—and I was the loud one of the two of us—and having to explain to people why it was entirely reasonable for two grown adults to not take an infant crying over his sore mouth to the dentist because they were worried that they were going to take him. And I'm advocating about this Indian family from—I don't even know where they're from; it was not Lumbee land—to a bunch of people who have never met an Indian, at all, except me. So it was quite the experience.

And my property professor didn't teach *Johnson v. McIntosh*, which is unheard of, because he happened to be the lawyer who argued against affirmative action. He's one of the leading authorities against affirmative action in the United States and had been working for the Michigan school system—University of Michigan—in their affirmative action case, and one of the plaintiffs in that case challenging Michigan's failure to apply affirmative action was in my section. So it was constant, just constant activism, it felt like. Because everywhere we went—it felt like it felt like everywhere I went—and Prop. 87? Prop 82? The desegregation of when California stopped applying affirmative action had happened only three or four years before I started school at UCLA, and so there was a very limited number of brown students in my class—nine hundred. And I think we were, of all minorities, something like a hundred out of nine hundred. That's a lot—a very small number. So it was again, shaping of my—was it shaping me then, or was I just prepared for it? I think I was probably just prepared for it. Um, I left that class—the reasonable man class—so angry, so very angry.

Brooks: What does "reasonable man" mean?

McMillan Nakai: When you evaluate crime and criminal responsibility, would a reasonable person do X, or would a reasonable person respond Y? Just to determine whether somebody's conduct is just misconduct or criminal. And so, it would have been a defense to murder if their negligence had been reasonable. It hadn't been negligence; it had been a reasonable reaction versus negligence. And so that was a manslaughter case. Those people were committing a manslaughter. And sitting in that classroom, I was angry. I was twenty-two. I will defend myself that way. And my criminal law professor pulled me aside, and he said, "Heather, you had all the right arguments, but you made them all the wrong way because you were so angry. It was clear to all of us. You scared that child. You scared your fellow student, by the way." Because I was angry. Because he had said something like, "That's stupid. You'd have to be an idiot to think that," and I thought to myself, This is why they—I literally turned around and said, "You're why they went to jail. You. You're also probably why they were afraid." Um, and he was like, "You made all the right arguments all the wrong way." And I learned a tough lesson about being a good lawyer, divorcing emotion from things that are always going to be very emotional. Can't always be emotional when you choose to be a federal Indian law practitioner and take something so personal as Lumbee recognition as your pet project. I mean—it's a lesson I needed to learn. So law school was a learning experience in a variety of ways, and the average law student is twenty-eight years old, and I was twenty-two. I was a baby compared to most of my peers. One of my classmates was pregnant, and I remember looking at her and being like, "You know coming to law school is the craziest thing you ever did. I can't imagine," she was like, "I have two kids

at home. This is gonna be fine." I just couldn't, and I got strep throat, which I, turns out, don't have the antibodies for, 'cause we used to not get it a lot here. And so it put me in the hospital, and that was scary, 'cause I was alone, and twenty-two.

[01:04:59]

From her—her kid had strep throat [Brooks laughs]. She didn't get sick, but I did. Love her [Brooks laughs]. Made some lifelong friends. Certainly made—had some peers and some more senior students who still to this day are the people I go to when I need feedback on arguments. They're now law professors, and they're still the people I turn to, one of whom is a Lumbee who had grown up in California. So I learned a lot about being a Lumbee being what we call "off." And everywhere I went I would find Lumbees. At Dartmouth, I was the first Lumbee student in twenty—almost—I think eighteen years. I think the last student had graduated—well, I guess ten years, she graduated in '87. And arguably the first in twenty years to had been actively engaged in the Native community aggressively. And my solution to that was not to go home and be with other Lumbees, it was to bring other Lumbees to me. And so we went from having one Lumbee in twenty years to having one every year, or three, if I can help it. Went to LA, there was a law student, the lawyer who—she was Lumbee—and in the fourth year of a joint degree program, and someone said to me at my visitation, "There's another Lumbee student here," and I said, "No, there's not." He said, "Yes there is," and I was like, "I would know. There aren't that many Lumbees in the world. We all know each other [both laugh]—certainly those of us who are going to go be lawyers." And then she came around the corner, and I said to her, "Oh my god. You are a Lumbee," and she laughed. She was much older than me. She's not much older than me, but she was an adult and had children, and I as the kid. And she said, "I am, was there a doubt?" And I was like, "Not now. Where did you come from?" [laughs] In front of the dean. And so, there was another Lumbee who lived in town and worked for a radio station, and he came and found me. He heard there was a Lumbee student at UCLA, and he came and found me. It's been—and that's been my experience everywhere I go. So, law school was a learning experience. Um, did I answer your question? [laughs] Sorry.

Brooks: Mm-hm. Yeah. No, totally. Um, yeah, I guess we were talking about law school in general, and how long is that, is it two years?

McMillan Nakai: It's three.

Brooks: Three years?

McMillan Nakai: It's four if you do a joint degree program, which I did. I did it in three—did all my coursework in three.

Brooks: Of course you did.

McMillan Nakai: I was ready to come home. I had been away from a long time. Most of my friends had gotten married, and they were having kids, and I felt like I was missing everything in North Carolina. And I was missing a lot. And, my 2L year, I mean, I had worked. I had gotten these amazing jobs and amazing opportunities. I was not in the top ten percent of my class my first year, but I managed to get a summer associate position—shocked everyone [Brooks laughs]. And so I had good work experience. I knew what I wanted to do, had maneuvered my way into a—your third year in law school you try to get into, if you have any hopes of doing, sort of—going to high level places, policy wise—not necessarily just academia but academia—you try to get into seminars with professors. But they typically take only students who had gotten A's in those base classes, and I had not. I had not. Professor Stephen Bainbridge's most—many contract classes use Bainbridge on contracts for their textbooks first year, and Professor Bainbridge teaches at UCLA, and I maneuvered my way into his seminar. I had to get special permission. And so I had a chance to write a paper and do good work while I was at UCLA, but I was ready to come home, and so I escalated that graduation as quickly as possible.

Brooks: So you said it was a dual degree?

McMillan Nakai: Getting your master's degree in American Indian studies, and your J.D. And I never completed the master's. I don't have my master's degree, because I could not file my thesis, because by the time it was done and ready to be filed, I was already a federal employee, and my thesis was contrary to the interest of the government.

Brooks: Oh.

McMillan Nakai: Complicated.

Brooks: Yeah.

McMillan Nakai: 'Cause it basically had said the thing that's wrong with Indian economic development is the government, and the government should mind its business.

Brooks: Did you know, like, when you were ready to turn your thesis in, did you know already that it wasn't gonna be accepted?

McMillan Nakai: I couldn't turn it in.

Brooks: Oh, okay.

McMillan Nakai: I mean, they were reviewing the drafts and everything, but then I have to go through—we're watching this play out on TV right now in the presidential impeachment process—you have to get approval to release things.

[01:09:52]

Brooks: Yeah. So you couldn't even hand it over.

McMillan Nakai: I could hand it to them, and they said, "No."

Brooks: Right, okay [McMillan Nakai laughs]. But did you know that, like, as you were writing? I guess I'm wondering at what time did you realize—

McMillan Nakai: No, it was done. I had finished it, and then there was—my professors were—my advisers were bouncing between UCLA and Harvard, and there was a lot of—turmoil, and then I had to take the bar exam, and there was a lot going on. And so, I was a federal employee. By the time it was done and ready to be filed, I was already a federal employee, but it had been done before I was a federal employee, and I just couldn't get it—

Brooks: Into the right hands?

McMillan Nakai: Just too much going on.

Brooks: Yeah, wow. That's rough.

McMillan Nakai: And I always thought, I can go back, I'll go back, and now they want me to enroll for a full semester to file, and it's not in the cards right now.

Brooks: Yeah, maybe someday, but also, it's like, you did all that work already.

McMillan Nakai: I don't need it at this moment.

Brooks: Yeah. Yeah. Um, so what was that first full-time job that you got?

McMillan Nakai: I ended up getting—the first full time job was a full year after I graduated. I went to work with the Indian Health Service, and I became a policy analyst. Which is the everything else category in the federal government. I was a lawyer, and I was in the Division of Regulatory and Legal Affairs, which became just the Division of Regulatory Affairs, but I basically interfaced with the Office of General Counsel for the Indian Health Service, which really worked for the main department. So I was the only

lawyer—one of the only lawyers—on staff at the agency, and I just became the go-to for many divisions, but in particular the thing, I think, that shaped my experience is that I became the director's expert on eligibility—the director of the Indian Health Service's eligibility expert.

And so, whenever questions of eligibility for Indian health care made it to the level of headquarters evaluation, I would be the person who did the research and review of that and made recommendations to the director. And in doing that, the necessary outcome of that process is that you get deeply involved in the definitions of "Indian" in federal Indian law and the various ways that people demonstrate eligibility. Everything from what federal records are eligible to be used to how they find them and how they research if it's necessary. Because by the time a question has risen to the level of headquarters evaluation, it's complicated. It's not a simple, Is this the right John Smith? It's complicated. And so, that primary document research I had learned how to do in college and that knowledge base that I had built, knowing that when I ever got to Lumbee recognition—and through all of this time I'm worried about Lumbee recognition, and working on it and thinking about how someday I'm going to be able to do these things to help, right? So I was prepared to be this eligibility expert, which is why I managed to do it in the first two years I was there. I really learned a lot about Indian primary source documents and really became familiar with the definitions of 'Indian,' and how Indians demonstrate eligibility under those definitions. So it was a wonderful experience, and that knowledge is how I discovered this thing that has made me—I think catapulted me—into being an activist, that, I think, other people see as activism.

Because my mom is also our family genealogist. You know, she's the person who manhandles all the stuff [Brooks laughs] for the family, and I have gained that desire from her or that interest from her. And so Ancestry.com had become big, and I was looking for something that I got on Ancestry.com, and I discovered my family census records for the last, I don't know, hundred and fifty years. And in doing so, I realized the enormity of what I was looking at, because professionally I was having to use very similar documents in my work.

And I can remember the day when I took the definitions of "Indian" and pulled the Lumbee Act from 1956 down and said to a peer, "When's the last time you read the Lumbee Act?" And they said, "Well, constantly." I said, "Not the version that's in your textbook—the truncated version that we always see. When's the last time you actually pulled the legislation itself down and read the whole thing?" And that person said, "Well, why?" And I was like, "Well, here's the definition of Indian in the Indian Reorganization Act. Here's how other tribes are answered—satisfy—this definition." She says, "Okay." I go, "Here's the Lumbee Act, and here's the

paragraph that's not in your textbook." She said, "Okay." I was like, "And here's my family census records. Tell me what you see." And a few years later, I was catapulted into activism, because the BIA said I was wrong [both laugh].

[01:15:26]

Brooks: When you were working for—it's the IHS, right? Indian Health Services—where were you living at that point?

McMillan Nakai: In Rockville, Maryland, which is where the headquarters is.

Brooks: Okay. Was that—you said you missed home, and obviously, now you're back on the East Coast, but were you hoping to move back to North Carolina, and that was just the best you could do? Or how did you end up at HIS, I guess?

McMillan Nakai: It's a funny phenomenon. I had left California rather abruptly and moved home to take the North Carolina Bar. I'm barred in North Carolina, so I came home to study for the bar and didn't have a job. And I found short term employment at a local law firm, and then study for the bar exam, and during that time I was like, Well clearly I have to have job, and I want to work in federal Indian policy, and I can't do that here in Lumberton, so I had gone to DC to do a job fair, and I met my husband there, um, just in passing. He's not a lawyer. And I really liked him, and, just like my mama, was like, "Okay, but I'm going back to North Carolina." And he said, "Well when will I ever see you again?" And I said "Never?" And he goes, "Well what do you mean?" And I said, "We're not going to run into each other at the grocery store. I live in North Carolina. You live in DC [Brooks laughs]. How's that going to work?" And he said, "I don't know. We'll make it work." And I was like "We just met, okay, stranger?"

He was very committed, came to North Carolina to visit. I studied for the bar exam, and, by the time it was over, I was in love. So I was like, Okay, we need to be closer, and I do want to work in federal Indian policy. I'll move to DC. So I did. And so we dated and lived in at least sort of the same town. And I went to find a job, and it took me a pretty good while, but we were in love. We knew we were going to get married, and I knew DC was where I was gonna be. It's close. It's only a five-hour drive, which compared to LA felt like I was in my mama's neighborhood [Brooks laughs]. So, it became the easiest place. And so I got a job. Finally—it took me a while—but I finally got a job. But in the meantime, I had been working at Blockbuster, frankly. Much to everyone's consternation. But I had to pay rent, so—

Brooks: Yeah. And what's your husband's name?

McMillan Nakai: Benjamin.

Brooks: And what does he do?

McMillan Nakai: He also worked at the Indian Health Service in finance for twenty years, nearly, and later in our life—two years ago—he quit his job, gave up his career and went back to school so that I could move here.

Brooks: Oh. Great. Well, we'll get there, but that's awesome. Okay, so you are with the IHS, and you are doing—you are the eligibility expert. Um—

McMillan Nakai: And I'm doing all kinds of other policy work. FOIA stuff, all kinds of regulatory work, but I wasn't a quote-unquote "real lawyer." And in the government it matters what series you're in, so I needed to get into the lawyer series, and the National Indian Gaming Commission was hiring someone, and I took a leap to take, like, a term position with them, and negotiated to be with them a little longer than the term intended, and so that my retirement account would invest with the government, so that even if they kicked me out I wouldn't lose all that investment. And on sheer faith basically. 'Cause I had a full-time government job, and I left it to go to a term position which is ill advised, generally. But it was the right move. I had been at UCLA. I had done a lot of economic development. I had done a lot of gaming work. I had worked for—the end result of all my internships was that I had worked for a gaming tribe in every corner of the country except Oklahoma, where there is Indian gaming. And I had worked as an intern, so I was incapable of doing much, as a first-year law student intern, but on the outskirts of the negotiations the first time boxing was broadcast in an Indian casino on HBO.

[01:19:55]

And so I had witnessed that firsthand I had, in other words, an unusual amount of Indian gaming experience for somebody who had no real experience as a lawyer. Um, [laughs] and so the National Indian Gaming Commission hired me on a term position and to do enforcement work, which is hard for practitioners, because, as my hiring official said, "This is hard. Particularly because you're coming here to do enforcement work. You're going to have to call tribes and tell them when they've done something wrong, and they're not going to like it, and they feel like it's a challenge to sovereignty or—it won't be comfortable." And my response to her was, "Oh, I'm clear that it's not going to be comfortable, but it's not going to be the hardest thing I've ever had to do to when it comes to an Indian." She said, "What?" I said, "I'm the agency eligibility expert. When you need a heart transplant, and somebody's telling you that the only health care you've ever been eligible for, you're no longer eligible for—

challenges your eligibility—I'm the person who has at least on one occasion had to say to the director that this person is not eligible. They can't have a heart transplant that they desperately need. I can handle it. This is not going to be a problem. That was awful. This is not that awful." And she said, "No, it won't be that awful," [laughs] and I said, "Okay, I'm ready."

Brooks: How did you handle that hardship with the eligibility and having to turn people down for things?

McMillan Nakai: My criminal law professor told me that I had to learn to find healthy ways to process frustration and anger and disappointment and divorce that from my legal professionalism. So, I had to learn to divorce my feelings and emotions from legal practicality. And it was hard, but it was the law. And it just is what I had to do; it was my job. So it's hard to be on the other side from Indian country when you're an Indian law practitioner, and when you're an Indian yourself it's even harder. But the alternative is that there are not Native people in these roles, and that's never going to be the right thing for Indian country. So I would rather it be me and have to make hard decisions compassionately than it not be me and maybe have someone who doesn't have any compassion whatsoever.

Brooks: Mm-hm. Yeah. Somebody has to do it. Um, yeah. So tell me a little bit about the Indian Gaming Service. I don't really know much about it as an agency.

McMillan Nakai: It's the federal regulatory agency that was created to be the federal regulator of Indian gaming for the United States. And so—the primary regulators of Indian gaming is the Indian tribes themselves, because they have the sovereign right to do this gaming, but there has to be somebody on the federal side. The federal government created this agency to insure that federal requirements are met. The legislation that created—the Indian Gaming Regulatory Act, which created the National Indian Gaming Commission, and which encapsulated Indian gaming, which tribes already had the right to do, into a federal structure so that they could stop being challenged by states—required certain minimums to protect tribes and ensure their self-governance and their ability to fund themselves and to be economically successful. The agency does a lot of technical assistance ensuring tribes have the resources they need, if they need them, ensuring that bad actors from the outside don't come in and have undue influence over Indian gaming, or—and the legislation literally says "to prevent organized crime and other bad elements from getting into Indian gaming." So that's what our agency does, and that is largely training and technical assistance and support. And when there are bad actors, taking a proactive role in ensuring that that is eliminated where possible. So it's a very small, very young agency. There are only a hundred and—about a hundred and

twenty—employees nationwide. We regulate—I think the industry was about twenty-eight billion dollars this past year. So it's a big, big job.

Brooks: Wow. Yeah. And is it based in DC?

[01:24:46]

McMillan Nakai: It is. Our agency is located—the headquarters of the agency—is located in DC. All of the lawyers work from that office, and a few of us now work remotely. We're generally assigned to handle regions—to be region specialists, basically. And so I'm the Oklahoma City regional specialist—Oklahoma regional attorney. And so—I spend a lot of time going to Oklahoma. And it's more efficient for me to go to Oklahoma from here than it is from DC, ‘cause you always have to fly through Charlotte anyway. And most of my work is remote, so what's the difference? And, um, they could pay me less, to be fair [laughs].

Brooks: [laughs] Is it fulfilling?

McMillan Nakai: It is. It's always challenging. I'm never stuck with the same thing over and over again. I do a lot of reviewing of finance agreements, and I do a lot of—I did a corporate law concentration when I was in law school. I always thought I would be a transactional attorney, and I do do a lot of transactional work. Bond offerings, loan agreements, that kind of stuff. I do really like—I'm a part time professor at University of North Carolina Pembroke—UNCP. I do a lot of training for my agency, and so I do a lot of training. And I do really like being able to provide technical assistance to tribes, tribal leaders, and tribal gaming employees on their services, because it's nice to be able to—they don't have to pay me by the hour—and to be able to provide that high quality legal support is really helpful. And there's just enough diversity for me to—you know, we do do some enforcement, and some part of me likes making sure that bad actors stay out of Indian gaming.

Brooks: Yeah. And you've been there since 2008?

McMillan Nakai: I have, so I'm on my way to twelve years. So, I've only been working remotely for two and a half years.

Brooks: Okay. So before that you were in DC? And then two and a half years ago you guys moved here?

McMillan Nakai: Mm-hm. Right.

Brooks: So let's talk a little bit about your case and the Lumbee eligibility and recognition and all of that.

McMillan Nakai:

I'm an optimist. And I like to believe that when—I believe that when you're right, you should be acknowledged, but when you're wrong you should acknowledge it. And so, having discovered this clear reading of the Lumbee Act, and that—and the pure discovery is that demonstrating eligibility for Indian services often requires an individual to prove their descent from someone the government has formally identified as an Indian, with an established blood quantum and tribal affiliation. That's how you establish your rights. And the common misconception about Lumbees is that we've never been federally recognized. And I often hear people say, and had heard all the way through law school, "Federal Indian law never applied to Lumbees." Like, "We'll talk about you a little in this class, but most of the stuff doesn't apply to Lumbees." And that was the accepted position. But the more I learned about federal Indian law, the more I realized that that couldn't possibly be true. And when I discovered on Ancestry.com [both laugh] that in 1900, 1910, and 1920, Lumbees had actually been listed, not on the federal census, but on the federal Indian census, which is an entirely separate document, and had been enumerated and accounted for since 1890, which was the first year that Congress had authorized separate enumeration and accounting for Indians, that we had always been included in those counts. Federal census counting matters in the world. It's how apportionment works, so how you get your federal elected officials in your states to Congress. It's how budgets are calculated. If an agency says, "We have to serve this many people," they usually use relative population numbers to demonstrate that need. And, when you're talking about Indian services, in fact that's exactly what they do. They say, "This is how many Indians there are in the country, so we need to provide services for this many Indians. Here's our justification for our budget." And we had always been included in that, and I knew that, because I had found these census records and realized we were always on them [laughs].

[01:29:43]

And in particular, those individual enumerations included all of my ancestors by name, blood quantum, and tribal affiliation. Which was shocking for everyone. And because when—in any legal textbook—when you look at evaluations of the law, there will be a lot of cases cited, and a lot of cases included in your textbook, but they will always be truncated for the primary principle or purpose that it's being used for. Not the full piece of the legislation or the full text of judge's opinion—it will be shortened. Summarized, if you will. And the Lumbee Act is always summarized by stating the introduction and then section three, but there's a section one and two, but that's not ever in the textbook. And so I believed that all of these years that all of our understandings were because we were getting it from textbooks. Like we were being told things and educated from this textbook methodology, which is totally reasonable, and

somewhere along the way we had just gone awry, and we just didn't understand. And maybe no one knew we were on these Indian censuses. The optimistic part of me—the naive part of me—said "Ah!"

And I always dreamed I'd go back to the IHS and do more policy work, less legal work. In order to do that, you often have to have Indian preference for hiring. And it's really hard if you don't have Indian preference to get into one of those positions. And so I needed Indian preference, and I discovered that I could establish that I was eligible under the law. And so I submitted everything I needed to be eligible, under the law, made my argument ready to do that, and I called the place that I knew I was going to have to mail it into—Nashville regional office—got routed down to this person who, when I said I was applying for individual eligibility for Indian preference, she said, "What tribe are you in?" And I said, "I'm not applying as a member of a tribe. I'm applying as an individual Indian." Because that's the category of Indian I satisfy under the IRA, the Indian Reorganization Act, which is the law that establishes Indian preference for government hiring. And she said, "I understand that, but what tribe are you in?" I said, "It doesn't matter." And now I'm a little annoyed. I'm a government employee. We don't talk to people this way—citizens this way—right? And she said, "Just tell me what tribe you are." And I said, "I'm Lumbee," and she said, "I'm not touching anything that's got anything to do with no Lumbee. You're going to have to call DC," and hung up on me.

Well, at this point it's 2011. I had been a government employee at that point for four or five years—plenty of experience under my belt. I knew a lot of the folks at the BIA headquarters, and so I had just met her boss, in fact, not that year, and called her and said, "So this is what happened, and they said I had to call DC. I take it that's you." And she said, "Well, Heather, you know, Lumbees have this complicated problem. You all aren't entitled," and I said, "Yes, I am. I can prove it. That's the whole point of this process." She said "Okay, well you would have to apply in Nashville, because that's your regional office." I said, "I understand that, but what she just said"—and I called names—and she said, "You call her and tell her I said"—and I said, "I'm not calling her and telling her anything. She's your employee. You call her and tell her." So she did, and they gave me the mailing address, so I mailed it to her. And she promptly mailed me all my stuff back and sent me a letter that said, "Dear Heather, you're a Lumbee. Lumbees are not eligible for Indian preference under the Lumbee Act. The Lumbee Act says that no services will be provided to Indians because of their status as Indians. Lumbees are not eligible. Here's your stuff. Oh by the way, here's a pamphlet called 'Chasing Your Indian Ancestry' in case you would like to further research your eligibility or something." That was the worst part of it because I had mailed her eighty-three pages of census records clearly tracing my Indian ancestry. I didn't

need a pamphlet telling me how to do that. She was wrong. That's not what the Lumbee Act says. It's just not. And in fact there's a court case that says that—that says, "You, BIA, are arguing that the Lumbee Act prevents eligibility for any Indian for any services provided for Indians, but that's not what this legislation says. This legislation actually says that Lumbee can't rely only on this legislation to establish their eligibility. But if they can establish their eligibility by relying on something else, something other than the Lumbee Act for eligibility, they continue to be eligible, there's nothing in this legislation that takes their benefits away."

[01:34:52]

And, in fact, section two, that's never in the book, literally says, "These Indians continue to be entitled to the same rights, benefits, and privileges they have previously been entitled to under United States law and the laws of North Carolina, as citizens of the United States and citizens of the state of North Carolina." So prior to the Lumbee Act, Indians—whatever you wanted to call them—prior to the Lumbee Act, in Robeson County, were entitled to benefits as Indians, provided to Indians in North Carolina and in the United States. So that didn't just go away because now everyone wants to call us Lumbees, that's in fact what the DC circuit said in 1976.

So I responded back to the BIA and said, "You misunderstood what I was asking. I'm not applying as a Lumbee. I'm applying as an individual Indian, and per this court case, *Maynor v. Morton*, the DC circuit plainly said, "If you can establish—regardless of your being a Lumbee—if you can establish your eligibility without relying on the Lumbee Act, you can continue to be eligible." Therefore I am establishing my eligibility without relying on the Lumbee Act and without relying on my tribal enrollment. I have established that I am eligible, therefore I need you to—you misunderstood apply the law and give me Indian preference, and they said, "No." They came back and said, "No," and in fact gave me—there is apparently a form letter that they send to all Lumbees who apply for Indian preference, and they edited the form letter and inserted a special paragraph explaining how I misunderstood *Maynor v. Morton* in a different font than the rest of the letter.

Brooks:

Sloppy.

McMillan Nakai:

—And sent it back. And so we went to—and again, apparently, you know—I don't know what they thought would happen. I don't know if no one googled me to find out I was a lawyer and in Indian law and in DC. I don't know.

Brooks:

Was their argument just that the Lumbee Act made you ineligible, that was just their—

McMillan Nakai:

That was it. You're just not eligible. You're a Lumbee. But the court had told them in 1976 they were wrong. They didn't have the authority to even make that argument and not to make it anymore. And they accepted that decision. So it's unclear to me why they just kept doing it, and I will go with, Because they could, and, No one challenged them. And we didn't have lawyers who could—we never had lawyers [laughs]. And so I appealed that decision, and you go to briefs. And my case is the first time the BIA had ever been forced to articulate why Lumbees are not entitled to services, and I always say, "A good lawyer can argue anything and make you believe—it'll sound good, even if what they're arguing is utter nonsense. But the proof is in the pudding when you have to put it in writing." You have to put it in writing, and then you have to read it out loud. And if you can put it in writing and read it out loud, then you've got a good argument. If you can't put it in writing and read it out loud, you don't. And so my case—what happens is when you appeal to the region director, and they deny you, you appeal to what's called the Interior Board of Indian Appeals, and we had never done that before. No Lumbee had ever done that.

And so I did, and we had to go to the briefs, and that required a lawyer on the BIA side to get involved. And we had to argue back and forth. And so I appealed it and filed my brief that had legal citations and arguments about the law, and they came back and said—first, we argued about the record, because they didn't have one. 'Cause when I say that, the first time I applied, she promptly responded, "No," and mailed me my stuff back, she did exactly that—shoved it in an envelope and mailed it back to me. You can't do that. Those are federal records. You have to keep copies. You could have mailed me copies back, but she couldn't not keep a record. She didn't keep a record of her decision. And so I applied, and I was like "Well, we've submitted this case, and they've submitted their record to you. It's two pages long. I submitted eighty-three pages of records. It was eighty-seven pages long. My submission—where is that?" And they had to admit that they had not even bothered to keep a record because my—what—appeal was so inconsequential? So then we argue about that, and they were like, "Right. She's right. We didn't even keep a record." So then the court makes them submit a record, and then they have to articulate why Lumbees aren't Indians. And so they say—

[01:39:42]

Their arguments are—first of all—anyone who's Indian and in Robeson County at any point in their lives, for any reason, if a record identifies you as an Indian and in Robeson County, you're a Lumbee and prohibited from getting service. That's absurd. Because, until some point in time, I think even today, you can go to the driver's license office and get a North

Carolina driver's license which my husband had to do when we moved here—his driver's license. And at the time, that wasn't pertinent, right? We hadn't moved here, but we had gotten married here. And when we got married, our marriage certificate said Heather, and Indian, and Benjamin, and Indian, getting married in Robeson County, North Carolina. So according to the BIA's argument that if you're an Indian and in Robeson County you're a Lumbee and prohibited from services is illogical because my husband is a Navajo. He's an enrolled tribal member and certainly not prohibited from services. There's trust land to which he is entitled, and resources and all kinds of things, right? And so I argued that that's absurd.

They said, secondarily, anyone who gets half their blood quantum from a Lumbee is a Lumbee, regardless of where they're enrolled. You're saying that my child, should I ever have one—and this is an argument that I had to make—that if my husband and I have a child, he or she will be one quarter Navajo, one quarter Cherokee Nation of Oklahoma, and half Lumbee. You're saying that because she gets half of her blood quantum from me it obliterates her treaty rights from those other two tribes? That can't be the answer. It doesn't fit in Indian law. It's illogical.

And their third answer is Lumbees weren't Indian. The Indian tribes in Robeson County weren't an Indian tribe because Congress never voted on legislation that had been pending before it in 1900—in 1920, 1930. Their argument was that because Congress had legislation pending, and they just never got around to voting on it—they didn't vote it down; there was no negative vote—it just never got around to a vote—that that was proof we weren't Indians. Which is also nonsensical. That doesn't make any sense.

So then I thought to myself, Well surely—it took me three days to figure out what that argument even was because it was so illogical that I couldn't make sense of it. By the time I figured out what they were arguing, I responded, and I thought to myself, Surely, we're going to reach reasonable here. Someone is gonna acknowledge that they have made a mistake. The DC circuit has ruled on this already. We can't be re-arguing this case from thirty—fifty—years ago. No. The IBIA came back and said, "No. You're Lumbee and the Lumbee act says—and you misunderstand *Maynor v. Morton*. *Maynard v. Morton* just stands the proposition that those people—those specific people—it meant that for them." And I'm like, "That's not how precedent works."

Okay, well. And then I had to go home and decide what I was going to do. I'm not a litigator, I've never argued anything in a federal court. Never filed anything in a federal court. Didn't even really understand how one went about doing that. And I think they thought it was the end. And I went and met with the BIA and said "Let's—y'all want to work this out? This is crazy." Because the other thing that they came back and said is that I

wasn't eligible for services because I had not been—that *Manor v. Morton* applied only to the people who had the same background as those people who were the plaintiffs. Those people had been identified as Indian because of a study based on physical anthropomorphology [sic]—anthropology? The study of physical characteristics of people to prove a non- physical thing. Eugenics.

And basically the BIA had come to Lumbee land in—the Department of the Interior, through the Commission of Indian Affairs, which is the predecessor to the BIA, had done a eugenics study on my tribe in 1936 and measured heads and scratched people to see if they turned red, and measured their bone structure and ran a pencil through their hair to see if it would get tangled, and held a paper bag up next to them to see if they were the color of a paper bag, to determine their blood quantum. Which is junk science. It was junk science then—they disavowed it. When the scientists, quote-unquote scientists, wanted to come back and finish the study—because they only tested two hundred and one people out of ten thousand; he wanted to come back and test more people—the BIA, Commissioner of Indian Affairs still told him, “No,” because it was junk science and World War II was on the way, and Hitler had risen, and eugenics was not a good thing or valid science.

[01:45:08]

And they had disavowed it, and they had told our congressional representative, our senator, that they would never rely on it to deny us services again. They couldn't throw it away because it was a federal record, but it would never be relied on. Yet, in the BIA brief sent to me, and in their decisions originally, they had said to me, because I had not been a subject of the physical study in 1936, I was not eligible to demonstrate—I could not demonstrate my eligibility—for Indian affairs.

So I went to the BIA and said, "Surely you didn't mean to use eugenics to justify your argument in 2014—'15—surely you are mistaken. Do you understand that what you're saying is because no one's held a paper bag up next to me, or scratched me to see if I turned red, or ran a pencil through my hair, that I'm not an Indian?" And they were like, "Well, we wouldn't have argued it that way if it had been on our desk," and I was like "Oh really, because I'm fully prepared today—my hair is down—to go have that test. Are y'all conducting eugenics testings around here somewhere?" And they said, "No, of course not, Heather." I said, "I don't think we want to go into federal district court and go argue about eugenics. Is that a thing y'all want to do?" And they said, "It is a thing you're going to do" "It is a thing you're going to do if this is gonna go." I said, "Because now I have a baby." Because by that time I had a child, and I said, "Let me be clear. I am a mother. I am a mother of a little girl that is half Lumbee, a quarter

Navajo, and a quarter Cherokee Nation of Oklahoma. She is enrolled at Navajo because that's what we chose for her, but she's half Lumbee." I said, "And because you all made those arguments, I had to go to the National Archives and pull that physical study. I needed to understand what it was saying that you needed me to do, or that I needed to do to be an Indian." And I said, "Do you know what's in this study?" And they said, "No, not really." And I go, "Well let me tell you how they summed up the results," and she said, "Okay." I said, "The title of the summary of the study is called is 'The Problem of Promiscuity Amongst the Indians of Robeson County,'" and the look on her face said everything it needed to say. She was horrified.

I said, "And in it, it names people. It says that the reason the results came back so disjointed—where one child in a family would be Indian, but the rest of them weren't and neither was their mom, or their dad, just that one kid—they justified that by saying that the mother, whom they named, had cheated on the father of that child because that's the only way that they could have become an Indian. And in fact says that it's a genetic problem. 'The Problem of Promiscuity Amongst the Indians of Robeson County.'" I said, "When I had to read that I was crying. It's horrifying. The children—their children—they've had to let a doctor they don't know scratch them. Some of these people are my relatives, my ancestors. They're assigned numbers, and they have to wear tags, and it's traumatizing to read it."

But when I got to that report, I was enraged, and I said, "I'm going to sum it up this way. One thing I'm sure of is that we will argue about this for the last time this time because that little girl of mine will never have to discuss with anyone a report entitled 'The Problem of Promiscuity Among Indians of Robeson County' with anyone. Because she is not genetically predisposed to something so horrifyingly disrespectful. And we're going to get that straightened out if we don't get anything else straightened out in this." I said "You're a mother. You understand. I'm serious. We're going to do this because I've already been horrified, and I will be the last one if I can help it." And she said "Okay," and away we went. And I think that they didn't think—lawyers often tell me that they don't touch the Lumbee problem because it's too complicated. It's politically complicated, it's historically complicated—turns out not as complicated as everyone wanted it to be—um, but it's complicated.

[01:49:50]

There have never been any historical studies here. Only recently do we have Malinda Maynor Lowery at UNC Chapel Hill doing real historical work here, real primary document research, real interviews. But other than that, we've not often—there aren't people coming here to study our culture, study our language, and study our life ways. And so there aren't books you

can read. And lawyers who do big federal court litigation like to have sources and documents and, you know, things they can rely on to make their arguments. In the Lumbee case you're not going to be able to do that. You've got to create the—primary source documents exist—but you've got to create secondary source material that you then rely on in court. And no lawyer, no firm, nobody has that kind of money to fund the law firm to go do that.

I couldn't find anyone to help me. Certainly not anyone to do it pro bono. And, federal court litigation is extraordinarily expensive. And my husband and I just looked at each other and said, "Okay, well, what you going to do? You've got to do it." And I was like, "Yeah." So I did. I paid my 450 dollars, went to the federal courthouse, in my sweatpants, and the guy said, "Don't you want to get a lawyer?" and I said, "I am a lawyer," and he went, "Oh"—the clerk at the courthouse [laughs]. They got used to seeing me go in and out of there, looking a little less than normal federal court lawyer would be like. But I challenged it, and I think they saw—like I said, it was the first time anyone had ever had to put it in writing, and when they read it, they thought to themselves, This isn't kosher. I even had a conversation with them one time where they said—the lawyer—said, "Heather, do I understand you to be saying that you think we denied you Indian preference because of your political affiliation?" I was like, "You don't hear me understanding that. It's what you said. I'm not eligible for Indian preference because I'm a Lumbee. If I had been anything else and applied for Indian preference the same way I did, I'd have gotten Indian preference, but because I'm a Lumbee I can't." "Heather, it's not your political affiliation that we're denying you for"—which would be illegal—"We're not denying it because you're politically Lumbee. We're denying you preference because you're geographically Lumbee." I was like, "Well I'll give credit where credit is due. I have been Lumbee for all kinds of reasons in my life, but I have never been geographically Lumbee, this is a first." I said, "Are you referring—" He said "Because the legislation says that everyone now residing in Robeson County, North Carolina—any Indian now residing in Robeson County, North Carolina—is a Lumbee." And I said, "Okay."

And there's a case that had just come down—*Carcieri*—which the Supreme Court interpreted the word "now" to mean contemporaneous with the legislation. That you had to be, "Now under federal jurisdiction," means the date of that legislation, which is 1934. And I said to him, "I don't mean to be rude, but you understand that I'm not a hundred, right?" He said, "Yeah." I said, "I'm thirty"—whatever I was at the time—"So it's clear that in 1956 I was not residing in Robeson County, North Carolina, because I was not alive." And he said, "Yeah." I said, "Do I need to remind you what the Supreme Court just said about the word 'now'?" Because this legislation says, 'those Indians now residing in Robeson

County, North Carolina.' The ancestors I'm tracing my blood quantum to had already died—they weren't alive in—so they weren't residing in North Carolina, and I wasn't born. So they weren't Lumbees—'geographically Lumbee'—and I'm not geographically Lumbee. I don't reside in Robeson County now. I didn't reside in Robeson County when I applied, and I didn't reside in Robeson County in 1956, so by no term am I definitionally 'geographically Lumbee.' I am a Lumbee, I'm enrolled, and I'm very proud of it, but geographically Lumbee?" And he said, "We're going to have to go now. We have to go figure this out." They went and figured it out.

And by the end of that year—I had filed the lawsuit in July—and by December they had conceded that when they determined that the Lumbee Act prohibited Lumbees from getting service under the IRA, they did so without finding any support in the legislation itself, any related case law, or any other piece of law. In other words, they just made it up out of whole cloth. [both laugh] And then they asked the court to dismiss my case because they were going to go back and reevaluate their decision because they had corrected their interpretation of the Lumbee Act. That was in 2016, so it took them two years to reevaluate their decision, and to come up with other nonsensical arguments.

[01:55:10]

Brooks: Is that where we're at now?

McMillan Nakai: Yes, they came back with other nonsensical arguments. First, they made me—came back and demanded that I provide birth and death certificates for every—for myself—and for everyone I'm descended from, ever. And, that's a study in trauma. Because I, at the time, didn't realize how traumatic it was going to be to go back and have to critically consider and analyze every one of my ancestors and how they died, why they died. What did they die from? Where did they die? And present it to the BIA and to explain to them, "You know how Indians aren't really on— We've only been documented so long. It used to be the—well I was the first one in my family, in my line that was born in a hospital, [laughs] so—"

They said the birth indexes weren't enough. They needed actual birth certificates, which just didn't exist for a lot of my ancestors. At some point, they just run out. There just isn't a documentary record on people. And they came back six months later to say—it took months for me to come up with, to the extent that I could—and they came back with a decision that said that they had done their own research and found some—first of all, because the documents vary, on blood quantum and analysis—that none of it can be brought on. And by "vary" they mean that on one census record they're listed as Indian of certain blood quantum, of a

certain tribe, that the next year they might not be on the census 'cause they weren't censused—weren't enumerated. The next time they might be on the census listed as a slightly different blood quantum, maybe using a different tribe name that they then corrected later, and when they died, they were listed as just Indian, and it didn't have a blood quantum.

The problem with that is that death certificates never state blood quantum. And they said that those documents contradicted themselves, that a death certificate saying someone was just an Indian contradicted a census record that said they were four fourth's Indian of such-and-such tribe, but I had to make an argument—I had to brief to the IBIA that under the dictionary that's not what "contradictory" means. They may not be identical, but they don't contradict each other. I had to argue about someone who's not related to me. They found a census record for someone who shares a similar name to my ancestor, but is not my ancestor, and I said, "I do believe he's a Lumbee, and I do feel obligated to respond to this, because he is a Lumbee, but he's not one of my ancestors. He's just not, I don't know what to tell you why his situation is what it is, but it's not my grandpa. I don't know what to tell you." [Brooks laughs] But I had to—it was just—now they're saying the records contradict each other—that these aren't the records they meant.

And every other argument, they're pulling them from nowhere. Their expert contradicted them, and they raised a lot of complaints about me not responding to a family history chart they provided, an eight and a half by eleven which I had not paid much attention to because I know who's on my family history chart. It's irrelevant. But it is illegible, so I didn't think much of it because what could be on there? So much so that they sent it to me in their brief four and a half feet by four feet. It's enormous, and still illegible. It didn't get better because they blew it up.

These are the kinds of arguments I'm confronting now because we're at a place of insisting on justice. Because make no mistake, when this started it was about Indian preference. But when they came back to me not saying that I wasn't eligible for Indian preference, but saying that *we* were the problem, that the collective was the problem, that all of us were—that struck a different chord, right? And this isn't about—I was ultimately offered that job, and I didn't take it because they won't give me Indian preference.

[02:00:01]

I've been offered another job there, but they won't give me Indian preference, and I won't take it, and this isn't about me. It's about everything I've discovered in that research because what this litigation has provoked me to have to do is to go look at those primary source

documents, and once I got started, I couldn't slow down. And I've discovered things I didn't know about our history—that we didn't know. Malinda Maynor Lowery is a good friend of mine, and we talk a lot now, because as a historian, the questions she asks of documents will be different than the questions I'll ask of them as a lawyer. And so her research has helped me so far along in making arguments about things and finding documents that we didn't know existed because the historian didn't know to go look for them, and before her there wasn't anybody looking, period.

And I think that's why when someone said, "What is it about you, Heather?" This is what it is about me, is that this need to—Lumbees have never gotten justice for—we don't get environmental justice. We don't get educational justice, we don't get—our sovereignty is not respected, and that in and of itself is injustice. We're held in a box, as I said to someone recently, "I don't live in a dead culture." I'm not claiming to be what my ancestors were pre-contact. We're a living, breathing culture. We evolve. We grow. We learn. We build. I'm a member of a living culture, and Lumbees are expected to be frozen in a box, and that itself is a form of injustice. So everything, I think, I do every day is intended to get us out of that box, to find a way to get justice somewhere, somehow, if it's for—one student can be sparked can be sparked to go get her federal Indian law degree in Indian law from Arizona and not be forced to stay here where it's comfortable and where everyone is going to tell her, "This is what it means to do Indian law. This is what you have to do." You know, breaking out of a box. Get capital "P" Perspective. If I can help one person do that, that's what I intend to do, and it's become like a thing now. [laughs] I never thought it would.

Brooks: [laughs] It's kind of a cause of yours.

McMillan Nakai: I'm always surprised, honestly, because it's not what I set out to do and the enormity has overwhelmed me. There have been moments where my husband—like, when my knees went out from under me when I realized, Oh, this is going to be a thing—a real thing, this is a real thing.

Brooks: Like another job, essentially.

McMillan Nakai: It's another job, which is why I work such a weird schedule, so I can have time to focus. And it—I was taking leave and having to do research and we used my daughter's college fund to fund the litigation the last time. I didn't own a computer—a personal—I did own a computer, it cost two hundred and fifty dollars at BestBuy ten years ago. We used to, like, check Facebook, and then I started this, and I needed like a computer that had word processing, like Microsoft Word, and you know, a printer—all of this stuff that didn't belong to the government. It was an enormous outlay

for—and the college fund wasn't that big, she was only two—three—she was two—so there have been times when I looked around and thought to myself I can't—

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McMillan Nakai: —um, and then, a couple years ago I was saying to my husband, "There's more research I need to do; there's more work I need to do." And I was coming home like every two weeks at that point. It had gotten out of hand, and we just—found a solution that meant that we all moved to Robeson County, North Carolina. And my husband, who had been living in big cities for twenty-some years—twenty-three years—suddenly moves to this small rural town. He's Navajo. He sticks out here, um—we have a funny name. Our daughter regularly used to come home from preschool saying, "I have a 'Z' in my name and it's a bad name!" 'Cause she's got a very Navajo name. Um, so it's been a transition. He's never had to cut grass before. They don't have grass in his corner of the Navajo reservation. And um, now he's got a yard. It's been a transition.

Brooks: What's he in school for?

McMillan Nakai: He's gonna get his degree in business administration. Um, he's got a twenty-year career in finance, so it's the natural fit. Um, and it's interesting for him to experience this, and it's interesting to live here with another—with an Indian who has capital "P" Perspective from some other place and he's getting perspective on what his experiences at home and offering thoughts on what's happening here. And timed with the *Washington Post* article on Lumbees, which—devolved? I'm not sure what the word is. Devolved? Has really brought up a lot of attention to the issues—

Brooks: Snowballed, kind of, yeah.

McMillan Nakai: It snowballed. Into a thing where people call me, and I'm so clearly uncomfortable with the phenomenon, that I seem to be forced into, had to be forced into the *Washington Post* article. I begged them not to mention my name.

Brooks: You don't—you're not comfortable with the attention, or—what is it that makes you reluctant?

McMillan Nakai: I don't want it to be about me. I don't wanna be the face of a cause. I wanna do the work and let it—I just want it to like—I don't wanna, um [clears throat]. It's just that—I'm just not comfortable with the acclaim. I don't want anyone saying like, "Heather's doing this," or, "This is for Heather," or, "This is what Heather's doing." I want it to be, "Look at what Lumbees are doing." And like—I mean, I've had lawyers call and say,

"Look at you guys go! You're gonna do this! Your tribe is gonna do this!" And I'm like, "Yeah, we are!" It's just not how I was raised, to be the—not standing on a soapbox for attention. The attention is not why I set out to do this which is why almost no one knew what I was doing until it was too late [Brooks laughs]. Um, I'm not sure that I—we—my husband and I—agree that I really didn't appreciate what I was doing, even though my steps were being—it was clear that my path was laid out.

And, uh, Mr. Bruce Barton, who I mentioned I worked for when I was—my sophomore year in college, I called him when I filed the lawsuit—like two weeks before I filed the lawsuit—and I said, "Hey, Mr. Bruce." I was trying to get in touch with him—his daughter's actually also married to a Navajo, and they have kids—and this argument that the BIA's making, in particular in the way I was gonna confront it, would invoke all of the children who were part Navajo and part Lumbee, and there's actually—the two biggest tribes, two of the three biggest tribes in the country, were bound to all have children together. There's a lot of them. There's twenty kids, I think, who are part Lumbee and part Navajo. Um, so I was trying to reach out to all of them to say, "Look, by the way, this is what I'm doing, and this is how it affects you." And I called Mr. Bruce, and said, "Hey, Mr. Bruce." He said, "Well, girl, what are you doing, now?" And Mr. Bruce Barton is himself a notable North Carolinian. His father, Lou Barton, is a well-known newspaperman, and they've written books, and—anyway. Um, and I said, "Well, Mr. Bruce, remember what I told you I was gonna do when I was nineteen?" And then he said, "You—are you gonna go save the Lumbees?" And I said, "Well, I'm not gonna save the Lumbees, but I'm gonna fix the Lumbee problem." He said, "Are you gonna fix all of the problems?" I was like, "Well, not all of the problems. But that one? I'm gonna fix it." He said, "Are you really?" And I was like, "Yeah, that's why I'm calling you. 'Cause I need to get in touch with your daughter. 'Cause this whole 'me fixing the problem thing.'" He was like, "Girl, you have been on a roll, haven't you?" And I said, "I have been." And two weeks later, he passed away suddenly. Um, and I had promised him that I was gonna visit him at Lumbee Homecoming, and I had never got to make it to him. Um, but this was the path, right? And I've moved here, and it's been a shocking transition. Right, I'm different than I was when I left. Capital "P" Perspective is important.

I—well, my realtor said to me, "Heather, you're gonna—are you gonna dump every apple cart you walk by. This is gonna be fun." And I said, "I'm not gonna dump any apple carts, but I am gonna nudge quite a few." If I can just nudge some apple carts, I'm okay with that. And so, that's been my path. And it feels like, things fall into my path—if I haven't nudged a cart in a while, it happens into my path anyway.

[00:05:36]

Um. I serve a lot, I do a lot of—anytime anyone asks me to do anything, I do it. I do a lot of advocating about letting our children go away to school. I reach out to any—you know, I work with the Indian education department here, the Indian education officers often send their students my way, or ask to come talk to their students about going away to school, and valuing that, and coming back [laughs], which is the more unusual part of what I did. Um, and so I think that this is the way that we spark change, is—if you can see it, you can be it, I guess. Back to that quote, "If you can see it you can be it."

Brooks: Is that—you think that's part of why you were—finally allowed yourself to be convinced to do the *Washington Post* article?

McMillan Nakai: No, they hounded me.

Brooks: Oh. [laughs]

McMillan Nakai: Um, the reporter was insistent, and I didn't wanna even talk to her, to be honest, 'cause I didn't want that kind of attention. Um, but everybody she interviewed, would end their interview, apparently, by saying, "You know, you really need to talk to Heather about this." So she had ended up—she had reached out to me initially, and I just had—was like, "No, not really interested. No thank you." And it had been about, gosh, seven months, and she came back, and she was like, "Could you just sit down and talk to me off the record?" And it felt like I wasn't gonna get out of it, so I did sit down and talk to her. And then when we were done, I said to her, "Okay, cool." And she's like, "You know I'm gonna be writing about you, though, right? You understand, that even if I don't quote you, that you're gonna be in this article?" And I was like, "No! I don't want my name in the article! I don't wanna be in the article, leave me out of it! This is nothing to do with me!" And she looked at me like I had lost my mind. And she stood her ground and was like, "I'm gonna write about you, so I can either write about you without your input, or with your input. You can choose." Um, she's tough, Lisa. But then I said, "Okay," you know, "But let me be clear I'm not gonna be on the cover of anything. I'm not gonna be your Indian staring off into the distance, 'cause that's how Indians are always portrayed." And she said, "Okay, don't worry about it." And I was like, "I don't know—you know, I just don't want—" And she said, "Okay." And then she interviewed me a couple times and then she came back, and she said, "So, Heather, they're sending a photographer." And I said, "No, they're not. I am not." And, in fact, he did come, and I had dodged every picture he took. And he even set up portrait shots, which ended up being in a magazine article. 'Cause this went from—as I understand it, an article, ending up being this cover spread in the *Washington Post*. It was a big deal. Um, and the only photo he got of me that day was—Dan McCready

was running for office here, and politics is not normally my—like, being involved is not my thing, um, but Dan was in a parade, and that would've been fine, except the train used to break up our parade, and it broke up the parade with Dan standing right in front of me [laughs] for twenty minutes [laughs].

Brooks: Aw.

McMillan Nakai: And I was just like, "Oh I don't wanna go over there. I don't wanna go—" And then my husband was like, "But if they weren't here, you would take this opportunity to make your point." And I was like, "Okay, I would." So I went, and the only photo they ended up getting of me that day was me talking to Dan in the parade, and that became the stock photo that they—the *Washington Post*—used for his campaign, the whole time, and it was a big deal! He was—I was on the cover of *Apple News*, for twenty-four hours. The whole world would turn on their news button, and I would be there, for twenty-four hours. And I had not—I was parade-ready; I was not ready. It was eight o'clock in the morning. [Brooks laughs] So it was an awful photo. Anyway, they wouldn't publish it without his taking—I get a phone call on my vacation from the photographer saying, "Heather, where you at? I need to take your photo!" And I was like, "Oh, no. We agreed." And he was like, "Yeah, but they're not gonna publish this article without a photo of you. So I need to get your photo." And I was like, "Well, I'm in South Dakota." [Brooks laughs] He was like "Uh." So anyways it got delayed for a whole month because it took me three weeks—two weeks—to get back. And they took photos, and then they published it. And that was—overwhelming. Um, but largely a positive feedback, and I think it caused people to look at—look at us [laughs].

[00:10:20]

Brooks: I saw—I did look at the article the online other day, and the photography is really stunning. Just like, all of the portraits.

McMillan Nakai: And if we get done here in time, you should run down to the museum. The university has done a montage of it.

Brooks: Oh, cool.

McMillan Nakai: With Travis Dove, the photographer, his photos from the article—not just from the article, but ones that didn't even get published, historical photos of other people—historical portraits, and then, place. People and place. Then, now, and place in the middle. And they've done a whole museum exhibit on it.

Um, so it sparked people to think about and talk about what it means to be Lumbee to them. Where I went wrong, where they felt like the article was wrong. Just a discussion. And, you know, that—there are more students who are thinking about—come approach me now and say, "Hey, I heard you went to Dartmouth," or, "Hey, I heard you used to live in LA," or, "I wanna be a federal Indian law practitioner." As I told the reporter, I don't think I'm gonna conquer federal recognition. I don't know that that's what I'm here for. What I do feel like I have achieved in my goal is sparking people. Because it won't be just one person. It won't be just one effort. It will be a collective effort. And I do think in this next generation of people—children, students, some are in law school now—that they'll come together, and there'll be ten or twelve of them, and they'll be unstoppable. And if I can spark—I've sparked two of them to go away to law school. Like, "No, you can't stay here! You have to go to—" wherever. Um, ones that—you know. That is what makes me happy. That's the thing that I get joy from, is seeing them go after things, and their dreams grow. They had the dream of going to law school, and both of them even had the dream of going to do federal Indian law someday, and now their dreams are growing. And I can see it happening, and that is success, for me. Is seeing them and knowing that they can do it. They can go do whatever. And who knows what they'll—people—will do? Whether it's Lumbee recognition, or cleaning up the river, or whatever. Just, invoking change. So, that's who I am.

Brooks:

I know, I know we got there, but just to make sure I understand where you're at right now, what are you—are you working on argument, are you waiting for something?

McMillan Nakai:

We fully briefed—the arguments are fully briefed, and so now we'll wait for a decision from the Interior Board of Indian Appeals, um, to come back. And again, the second time they had to put it in writing, and it was only slightly better than the first time [Brooks laughs]. So, when you—even if you can't beat an argument, having it in writing in front of you is much easier than saying, "So-and-so said." And so it was interesting to be able to—we're in a far different place, I mean, and it's a thing we're still working on correcting, right, because even—we had a hearing not too long ago—a few weeks ago—and they were still saying, "But you're terminated." But we're not. And that's changed in the last three years. Um, so let's stop saying that. And so, it's a sea change in how we think about what's happening.

And the lawyer who had argued *Maynor v. Morton*—way back in 1974 or '72 when they first argued—I called him. He's still alive and still working, and we have some mutual contacts. I called him and said, "Um, this is what I'm doing. I'm rearguing your case." And he just, discovered for the first time the BIA had not fulfilled their obligation under the first case. He

goes, "And Heather, can I ask you something? You're not old enough to have been subject to that appeal." I was like, "Indeed I am not. I was not born when you argued that case." Um, he said, "So, how are you proving you're an Indian? You weren't subject to the study. How are you proving?" And I told him, and he said, "Why didn't anyone ever tell me about those records?" And I said, "They didn't know!" He said, "They didn't know the records existed?" "No, they knew the records existed. They didn't know what their legal import was." And he goes, "How could they not know?" And I said, "How would you know, if you weren't well versed in what those things meant? How would you know?" And he said, "Well, that's a good question." And I was like, "Right."

[00:15:01]

And no one has ever cared. And they've just assumed, "Well, Lum—federal Indian law didn't apply to you Lumbees." The Constitution applies to everyone who lives in the United States. And according to the BIA, that doesn't apply to us either. And that's not how any of this works. So, um, we don't get justice. If the Constitution doesn't apply to us, we are not getting justice. If federal Indian law doesn't apply to us, we're not getting justice. Because it does apply. Legally, it applies. And so, as long as that injustice exists in the world, how can you move forward with any other form of justice? You can't. We'll be stuck, all of us collectively, will be stuck where we are because we can't deal with the reality of how we got here to begin with. Um, so it'll be interesting to see how North Carolina changes—how the world changes here—as we get justice. Because, uh, I just had dinner two weeks ago today actually with a presidential campaign candidate. And, he talks a lot about environmental justice, and financial justice, and all of this stuff, and I said, "You can't get justice on all of those things, unless you address where you started. And where we started was colonialism. It is not slavery. You only got here, because of that. And if we can't go back and work forward, we can't succeed. You just said that. So let's go back and start at how we got here. Because we can talk about environmental justice, when we can talk about how settlement occurred. Because settlement patterns reflect the damage we all suffer when we have floods here." So it's all tied part and parcel, and I can't fight every battle, obviously. But I do think that the one battle, or the few battles I choose will impact everyone.

Brooks: What was—as far as you know, what was the original intention of the Lumbee Act?

McMillan Nakai: Oh, I actually do know.

Brooks: I would assume you would, but [laughs]—

McMillan Nakai: The way—lemme tell you—history says that we, um, had been having trouble maintaining our own school system, and maintaining our separate and distinct nature, and we just wanted Congress to give us a name, which is illogical. That doesn't make any sense. But that's what the story is, right? That we just wanted Congress to recognize us as Indians. We didn't want services. We didn't wanna be wards of the government. We just wanted a name. That's the story that's always been told, and because the 1950s are what is known as termination period in federal Indian policy, when the government was terminating its responsibility for Indians, everyone—people who comment on it now, based on that narrative—say, "Why would they do that? They knew they were gonna get terminated. Everyone was getting terminated."

But the real story is that, um, beginning in—well, when North Carolina first had to provide separate school systems for freed slaves, they suddenly had, here, to deal with the unusual problem that they had Indian people. And so, not only do they have to—that was a huge financial output to provide services to the freed slaves—we're way back in 1870-ish—and they were trying to find—they were saying to Indians, "You have to go to the schools with the African-Americans." And we were saying, "No. Those aren't acceptable schools." We had believed in education and had been receiving some forms of education in some instances, anyway. We were aware. And Indians had fought to have separate schools, and so the state had provided separate schools, but they were poorly funded.

Um, and so Hamilton McMillan, who had been our representative to the state came up with—understood—that the federal government was responsible for providing education to Indians, and had been providing education to Indians in the Western half of North Carolina, and believed they had a responsibility to provide education to all Indians. They did. Um, and had proceeded to go do that. And the feds had told him, "No, we don't recognize—we don't have a list of those people. We don't have them on our list. You've been providing their education all this time. You should keep doing that." And so, in order to provide funding to us, they said, "You know, we'd have to recognize that name, and we don't recognize that name you're calling them by."

[00:20:03]

So he comes home, and he's like, "Cool, well you can call them whatever name you want—they're Indians! You just need to recognize their name. Fine. We'll call them something you recognize." And we went and got a piece of legislation passed to recognize our name. That didn't work. So he—there then becomes his effort to get—they're saying, "That's not how—what we meant, Congress has to tell us about them." So they went to Congress to ask for funding for our school. And Congress is hearing

this bill, and they say, "No, we don't have the money right now." There's all this going around, and the legislation never passes. Then in 1911—'cause every two years there's another bill, there's another conversation about what they need to do with us. In 1911, there's a bill, and the BIA, the Department of Interior says to Congress, "Well we don't need to build them their own school," 'cause Congress—the House had already passed a bill to build us our own school. And he went to the Senate, which was the next step, and said, "No, they don't need their own school. They can go to Indian schools!" Carlisle Indian School existed at the time—"They can go to Carlisle!" And he goes back to his office, and writes a letter to Carlisle, and says, "I just told Congress that those Indians in Robeson County can go to Carlisle, go get them. They need to go there. And they did. Jim Thorpe, who's the most well-known Indian athlete in history, had several Lumbee teammates on the football team at Carlisle. He came to Robeson County eventually. Um.

But at every step, beginning in those very early years, the problem had been that Congress had never given us a name that they recognized. That the BIA—Department of Interior—would accept as establishing the federal relationship. And continuously told us—so that 1920, 1930, you have us applying for federal recognition, for recognition of our name as an Indian tribe. The IRAS passed in 1934, that's supposed to correct all of these—'cause we're not the only tribe with a problem somewhat like this in the world. And sometimes don't have land anymore, and some tribes have land but no name. It's just a mess.

So Congress passes the Indian Reorganization Act in 1934 that's supposed to clean up all of these problems and there are any number of issues that they specifically addressed in the discussion. Catawba was one. Um, the Seminoles in Florida had some complicated issues. And so, they pass the IRA, and there's category A, which is the Indians who are on federal reservations and members of federally recognized tribes. So everyone who has land and is recognized by a name. Then there's Indians who don't—who live on the reservation, are not a member of a tribe, but are descended from somebody who used to be. That's category B. Category C is everyone else, who is one half blood—one half Indian blood—from a tribe indigenous to the United States. That's everybody else, who's not already swooped up into the federal system. D is Oklahoma and E is Alaska. Maybe the other way around. There's special provisions for Oklahoma and Alaska, in this legislation.

Well, it gets complicated; it gets ugly; it gets very messy; it gets conspiratorially wrong. But, there are people in the government who don't want it to be this way when it comes to Lumbees, and they keep saying, "Well you know, one way we could fix this problem is if Congress could pass legislation calling them by a name, that would give us authority to

provide them service." So if they just go get legislation calling them a name. Lumbees are not—we are involved in the IRA movement—we're there prepared to testify on behalf of the IRA—that's how I am clear everyone knew the IRA would apply to us. But, when it isn't being applied properly, it's been non-stop from 1936-ish all the way forward, that every two years, we were there trying to get somebody to recognize us by name so the BIA could undertake their trust responsibility, which they were obligated to do. They just needed Congress to call us by a name.

[00:24:40]

So they're working on it, and working on it, and working on it, and it passes in 1956, but it had been different pieces of legislation by different names—whatever somebody thought would be politically expedient, frankly, who was submitting the bill. People were working on it. 1950—when we voted on it in 1955, to be called Lumbee was the first time we had decided what we would be called. But, the effort to have our name called—a rose by any other name still smells sweet, right? We were Indians. We were a tribe. You can call me whatever you want to, as long as you call me together with everybody else—my tribe. Um. It finally passes in 1956. We weren't seeking recognition during termination; we'd been seeking that acknowledgement all those years.

And so, when—by this point in 1956—when the bill is passed, we're all being kept to what our leader said at that hearing, but that's also taken out of context. Because he says in that hearing, We don't wanna be ward Indians. We're not asking for anything more. We just want to get—you know, we just want to protect what we have. And what we're getting." Because we didn't—the world didn't seem to understand that we already had land, we already had a school system, we just wanted that to keep going, and we wanted it to be easier, administratively easier. And the BIA had told us it would be administratively easier if Congress called us by a name that they could work into their budget. So we thought that's what we were doing.

But that's not a narrative you're gonna read in a book. Unless I finally have time to write one [Brooks laughs], I guess. Um, because the legal intricacy of how you know all of that just comes all from primary source documents, and there isn't any academic evaluation of these primary source documents. There are tons of them. Cases of them. And I've been in the National Archives for probably a solid month, over months and months and months with research records and whatever, um, finding documents that we didn't even know existed. Because we didn't have a lawyer to see the red flag in the document that said, "Oh, when they said this, it means there is another document over there," but you wouldn't know that unless you're a lawyer. And so, um, that's part of my activism

too, right? Is doing all of this, it's just a question of ever getting to a place where I can—probably when all the litigation is done, that would be the next project. I'll work on the writing sometime soon [laughs]. It's just a lot.

Brooks: Yeah. So just to kind of—if a person were to try to sum this all up—a person who doesn't come from a legal background—The Lumbee Act neither qualifies or disqualifies you from seeking individual recognition.

McMillan Nakai: The Lumbee Act does not disqualify us from services, benefits, and privileges offered to Indians because of their status as Indians. It merely acknowledges our tribal name. A tribe is federally recognized in a number of ways. One of those ways is if Congress acknowledges them by passing legislation. In passing the Lumbee Act, Congress acknowledged that our federal relationship existed, and it had to exist, or the legislation couldn't have been passed. They had the right to give us—to acknowledge our name—because we're Indians and the Constitution says only Congress—Article 3, Section 8—says only Congress can enter into agreements and work with Indian tribes. So Congress, by passing legislation, that says we are an Indian tribe, and that this is our tribal name, is not granting of benefits. It's an acknowledgement that those rights, benefits, and privileges already existed.

Brooks: And it's just that the language says something to the effect of, "We're not asking for anything in addition currently?"

[00:29:05]

McMillan Nakai: Well, the problem is that at the bottom there's a provision—the BIA, after the legislation was done, the Commissioner of Indian Affairs, Department of Interior, came over and said, "Wait. We're terminating every tribe, so we should make sure that we don't create a new additional benefit to them. We gotta make it clear that we're not creating new benefits." And so in the end, the compromise legislation paragraph says, "Nothing in this act, shall make such Indians eligible for services provided to Indians because of their status as Indians. And no statutes that apply to Indians 'cause of their status as Indians shall be applicable to the Lumbee Indians. The Washington DC—the DC Circuit—which is the court level just below the Supreme Court, has said that nothing in this act, that precursor, applies to both sentences, and that the conclusion is nothing in this act gives them benefits, or takes them away. They exist as they existed before this legislation. And then you have to answer the question, "Well, what existed before this legislation?" 'Cause clearly we're Indians, and Congress isn't making us Indians, they're saying we are Indians—they're acknowledging that before—we just are. It's inherent.

So, if we were Indians before the legislation, we didn't stop being Indians because the legislation was passed. And if we were Indians before the legislation, what does that mean in federal law? And it's clear, from the Constitution, and everything that comes after it, an Indian is an Indian. Capital "I" Indian under federal law. And so, that's the key. That's the thing that was so complicated for people to understand—it's only complicated to understand because there is this false narrative, that has existed for so long, that Lumbees weren't covered by federal Indian law. But that's based purely on—somebody said that 'cause that's what they wanted it to be in 1956—it's what those termination advocates wanted it to be, in 1956. That doesn't make it so. And in fact, there is a number of very real, very reliable documents that prove that. And so, at the end of the day, if my case is successful, and I prove that I can establish I am an Indian, under federal Indian law—I've not used anything that's unique to Heather—the records I have, everyone who's a Lumbee has. If they're an enrolled tribe member they certainly do. Um, and they're eligible—they're able to establish their eligibility the same way that I am, if that makes sense. But if I can eliminate the umbrella of, "You're not really an Indian—"

Brooks: Because you're a Lumbee.

McMillan Nakai: Because you're a Lumbee. If I can eliminate that umbrella, then we can talk about the world of possibilities. But, eliminating that false narrative that the 1956 act terminated us and recognized us at the same time—which is illogical all by itself—um, is the thing I think the—I've already corrected the facts, another question is how to correct the narrative. Um, because I think once you start correcting that narrative everything else just kind of falls into place. It's still gonna take work, but correcting the narrative is the hardest part, because everyone says, "But it recognized and terminated us." And I was like, "Nope the Secretary—the Solicitor of the Department of Interior has acknowledged it did not terminate us. It did not." But it said nothing about whether—they've always said it recognized and terminated us at the same time. Now they're saying it didn't terminate us. So it must have acknowledged us. And if it did, and we can all agree it did, 'cause it said, "These Indians of Robeson County are an Indian tribe and shall be called the Lumbee."

Brooks: What—was there a name for the Lumbee before that, before 1956?

McMillan Nakai: Yeah. In state law, yes, certainly. And it had changed from the Cherokee Indians of Robeson County, the Indians of Robeson County, the Croatan—I mean, any number of names. But the structure of the community—the nation itself has existed continuously and perpetually in this place since—per our creation story, creation. Um, and that's what part of that false narrative. It's a way to undermine the Lumbee story to say,

"Their name has changed. They don't even know who they are." No, we are clear on who are. We are not clear by what name you all will accept in the outside world. And you can call me a purple painted zebra if you want to. As long as you mean, purple painted zebra—my entire nation. 'Cause we are a nation. So, yes, our name has changed, our structure, community, our families, our history, our language, our land, our culture, has not changed with that name. It's always been the same group, but names have changed.

Brooks: Is there any names from generations past that would be preferable, or like, that rings more true, or does Lumbee kind of work for you and for everyone as—

McMillan Nakai: I don't know that any name—until there is a properly articulated narrative about nationhood, and sovereignty, a discussion of names is always gonna fall flat. Um, it's always gonna be disparate, because people will believe, "Well, you need this name to get sovereignty," or, "You need this name to achieve this purpose or that name to achieve that purpose." Um, I don't think that there is any one name, that everyone who agrees we're all one tribe, will accept. But—this is a big but—only one name can we demonstrate we chose, and we voted on. And that one, has been acknowledged by Congress, so for purposes of our outside, government to government relationship between the tribe and external governments, is the one that probably will hold the most water and certainly is the most widely accepted, numerically speaking.

[00:35:58]

When you talk about ancestral names, ancestral claims, internal and personal—they're hyper personal and hyper internal—there is always gonna be a discussion. Because as late as 1760, this was a land unto the Indians. It was a place where people were sure, that the world was sure, that if you were in North Carolina and you were an Indian, and you were unsafe, for whatever reason, there was this place, this enclave where you could go, and you would be safe. And that's here. And so, people have ancestors who've moved sometime between creation and as late as 1840, here to live, because this was the place they could—when Andrew Jackson was marching people away, you could come here, and Andrew wasn't coming this way. Um, it's always been an enclave of safety and security for Native people.

And so—my family for example, my husband, is a Navajo, and he has found a place here in Robeson County. If ten generations from now, our children live here, they may very well be Lumbees. Our descendants may very well be Lumbees. But they will always have that Navajo ancestor. And we speak Navajo in our house, and there's a lot of Navajo things that

happen here. And they may weirdly hold onto a lot of, a little bit of, somewhere in between, Navajo culture. That won't make it Lumbee culture; it'll still be Navajo culture. They can be Lumbees who practice some aspect of Navajo culture because they have a right to that heritage. Who knows? Um, but that's why it's so complicated with, when you talk about tribal identity, and when you talk about the difference between—and I am always very clear to distinguish, I try to always be very clear to distinguish between political identity, in the government to government relationship with the United States and the state of North Carolina, and personal, cultural, historical identity. The way you worship, the way you do things at your house—that's personal. And it can even be group personal. But when it comes to the government to government relationship, we have to distinguish between those two things. In Heather's opinion. Right. Other people don't agree. That's okay. I always end the conversation with, "But are we agreeing that we're one, and that when people see us on the street, they see us as the same, whether we believe that we're the same or not? That the outside world believes we're the same?" And they're like, "Yes." And that's when I always wanna pull out that Dartmouth—big words [Brooks laughs]. Frantz Fanon and the idea of the other.

Brooks: What is it?

McMillan Nakai: Frantz Fanon, this political theorist I learned about in my freshman fall, um, believes that nationhood develops because there is you and another. And that you build a nation because you recognize that it's—there's another. And you distinguish yourselves from that other largely because you have to. And that a nation forms then—it's not a—it's not always a language thing, or a culture thing, or a food thing, or a geography thing. It's an us versus an other thing. And so if we can leave a conversation disagreeing about tribal names, disagreeing about all kinds of things, if we agree that we are the same versus the other, that's a place where you can reach some sort of mutual understanding. And so, I'll leave it to my nation to decide what we shall all be called. But, when it comes to the outside world, I believe in achieving justice. That we can achieve justice, and we should be fighting towards that, but we can chew gum and walk at the same time. [Brooks laughs]

[00:39:53]

Brooks: Um, so, your daughter is six now?

McMillan Nakai: She is.

Brooks: What does she know about what you do and all of the work you've been doing?

McMillan Nakai:

When I was in law school, I used to hear that the kids who have lawyers as parents are more—are better prepared for law school than the rest of us. And that proves largely to be true in law school [laughs]. And it certainly proved true for me. Like, I did feel that my classmates who had lawyers for parents were more prepared for law school than I was. Um, but I can't say that I understood it until I had a child. She's six. If you shake hands on an agreement about something, or make a deal with her, she's gonna write a contract, and bring it to you to sign. She can read a little bit; she can write a little bit—it may just be checkmarks and coloring scribbles, but you're bound to that contract. She's clear on that [Brooks laughs].

And we do spend a lot of time on language and culture, and history. Um, as I mentioned, my husband is Navajo—half Navajo and half Cherokee Nation of Oklahoma. Both of his parents are enrolled in their tribes, and both of his parents speak their languages, and both of his families live in tribal homelands uncategorically. Um, and culture and heritage is very important to the both of us. And so our daughter has a traditionally Navajo name. She spends a lot of time with her elders here. She spends a lot of time on the reservation in Navajo. She spends a lot of time in Oklahoma with her aunts and uncles, great aunts and uncles, her cousins, um because that is where we think our resources are best placed. Um, she probably has a greater understanding of—not just the law—but she certainly understands the Lumbee problem, if you will, better than most adults I know. Because she sees the toll it takes on her family—plus her college fund we used [laughs]. Um, and the language of sovereignty, and recognition, and Congress, and tribes, and governments is one she's heard from the day she was born. And I was litigating and pregnant.

And I do think, it probably marked her with, um, an awareness that probably is just part of her DNA, you know. And so, it's interesting. 'Cause she will correct you if you say she's, you know, she's—she's had awkward conversations with her grandmother, who was here for—my Navajo mother—my Cherokee mother-in-law came to stay for a while, and my daughter proudly announced that we had to go to the tribal council meeting, and that she couldn't go 'cause she was not Lumbee, and her daddy could not go 'cause he was Navajo, and "Sorry Grandma, we got to go." And I was like, "First of all, you're four, and you don't go to tribal council meetings—" [Brooks laughs] "—take it easy." But that, those are those moments where you realize she really does understand.

And when there are discussions about—we have Native American Heritage Month, I doubt anybody will ever put a paper headdress on anyone in any of her classes, ever. Because she's very clear about culture and she's very clear about what her culture is. She can articulate that boys have long hair and braids, 'cause her best friend is Northern Cheyenne and

those little boys sometimes do have long braids. Um, and she can articulate that her people don't live in teepees. And she thinks it's weird that other people think teepees are—'cause she's an Indian. And she's like, "I don't live in a teepee, I live in a house. We have a dishwasher." [Brooks laughs] Um, but she's spent time in a hogan. She speaks a variety of languages, and that made learning English—I mean, learning to talk [both laugh]—hard, for everyone involved. Um, and there are still times when in school or—kindergarten has been easier than preschool—where, she just doesn't know words in English for things that are common to kindergarten. Like she got accused of defiance because she wouldn't put on her toboggan, 'cause she didn't know what a toboggan was. She called it a winter hat, and so when the teacher went to tell her to go put her toboggan on, she had no idea what she was talking about.

Brooks: I wouldn't know [laughs].

McMillan Nakai: In Lumbee land, it's a winter hat. Um, and it's just, it does make her very—there's truth to the science that if a kid can speak more than one language, they can pick up, like, any language. She learned Spanish from Dora the Explorer, and carried on a conversation with a contractor here and the contractor said to me, "Where did she—do you speak Spanish?" And I said, "No." [Brooks laughs] And he said, "Well, where did she learn Spanish?" And then I had to basically say, "Dora the Explorer—" [Brooks laughs] "—I'm sorry." What can you do? I was like, "But she speaks three other languages, so, it just happens—she's probably gonna work for the CIA or the state department someday." [Brooks laughs] So it's just—it is an interesting phenomenon. And so then people meet her, and because her name is so Navajo, she has to explain who she is and where she came from, nearly the first time she meets everyone. Um, and so, she's adept at navigating it. So it's an interesting—but yes, I do think she understands um, Lumbee recognition deeply, and inherently, um. Because it's what she lives every day, frankly.

[00:45:37]

Brooks: And you chose to—I don't wanna say the wrong word but—you enrolled her as a Navajo?

McMillan Nakai: Mm-hm.

Brooks: Is that because she—you wanted her to be enrolled and she can only be enrolled in one place, or is that—?

McMillan Nakai: She can only be enrolled in one tribe. That's a federal—generally, it's not a blank—you can't go into federal Indian law—federal law—anywhere and find a blatant provision that says you can only be enrolled in one tribe.

You—individual Indian. But when it comes to accounting and enumerating for federal services, tribes can't claim people who are enrolled in other tribes, so if you go enroll in one of them, they will verify that you're not enrolled in anybody else—and so, then everybody knows your business. Because, when we enrolled her in Navajo, they wrote a letter to the Cherokee Nation of Oklahoma and a letter to Lumbee to say, "Do you know this child, and these are her parents?"

Brooks: [laughs] "Guess what they're doing?"

McMillan Nakai: "Is she enrolled at your tribe? 'Cause if she is, we can't keep her."

Brooks: Oh, wow.

McMillan Nakai: Um, and so, everyone knows everyone's business. Um, and, we have—my father in law—has land holdings and land rights at Navajo, that they will inherit, but she couldn't inherit them if she were not Navajo. There's some religious requirements that should she ever decide that that's what she wanted to do that she would need to be enrolled in Navajo. Wouldn't work in other places. And it's the language she most prevalently—she's got a Navajo name—and it's the language she most prevalently works on. And so it's just, that seems reasonable. My husband is a Utah Navajo, which comes with its own legal entanglements. And um, it's important that she understand that history, and that that's where she belongs. We're patrilineal here, in my family—my family is patrilineal—which is why when my dad died my mom moved in with his family. And it's a thing that was very important to me, and so when I married my husband, and Navajo is strongly a matrilineal community—that was a whole book in and of itself, of evaluation. Um, but in the end, I have to live my culture the same way they do and—I have to raise her how he was raised. Um, and so that's what we're—we're doing our best to give her a fair balance. It's not a thing she's bound to for life, if she decides she wants to be something else, then, she has her choice at Cherokee Nation of Oklahoma, or Lumbee, I think probably just one time, or something—I don't know how that works each time. Um, but she does have the right to enroll in any of those. And we keep it all well documented and established.

Brooks: Wow, um, well I've kept you for a long time, I do have a few questions that I try to ask everybody, um, just to kinda tie all the interviews together. They're not necessarily very relevant to the conversation we've been having, so just feel free to answer them however you want. So the first one is, what is your definition of success?

McMillan Nakai: Hm. To me, success had always been making—ending termination of my tribe. And, I had to accept that when I was thirty-five years old, I fully expected that to be my entire life—that I would be working on it when I

died. And maybe not ever achieve its success. And at thirty-six I had to say, "Okay, well, now we're not terminated, now what?" Um, and so I think to me, success means waking up—I have been successful that when I lay down at night and get up the next day, things are better somewhere, because I used that day. And whether that just means that my laundry is all clean and folded and put away, or my kid can sight word a new word for the day, or we have full Lumbee recognition, that will have met—I hope that is always my definition of success. Because not every day will be magical. And not every day will be notable to the world. But every success should be notable, either to myself or to someone.

[00:50:00]

Brooks: Great, well that leads right into the second question which is, what, in your definition, is a notable woman?

McMillan Nakai: Hm. I would like to believe that every woman is notable. Because to be notable means that you have made a difference. For someone, somewhere, somehow. Um, I think that probably every woman could be categorized some way as notable depending on what you're looking at. And in this effort, North Carolina women of note, or, women in STEM, women in motherhood—I recently read an article about how, women mother, and they've helped other women by blogging. And those are women of note because they have made a lot of lives easier because they told us about something that we never would have thought about. Um, so I think human beings are likely all notable. Even if it's a negative note, [Brooks laughs] which sometimes happens. Um, but to me that's what it means to be notable. And I think in that same way that you don't wanna elect a leader who wants to be a leader, the most notable of people are those who don't wanna be notable. Or rather, who don't wanna be noted. Right? People who don't seek it out are probably always gonna be the most notable.

Brooks: A reluctant leader is the best leader, isn't that what they say?

McMillan Nakai: Right. There's some short way to say that, right. A reluctant leader is the leader that's gonna be the best leader. So—

Brooks: Yeah, yeah. Well, that's great. Is there anything else we didn't talk about?

McMillan Nakai: No, I think I told you my whole life story. [Brooks laughs] Sorry.

Brooks: We didn't really get into any challenges that you faced specifically because you were a woman. I don't know if that—if you felt like that applies to you at all?

McMillan Nakai: I think it does. I think it's an interesting North Carolina moment. Um, irrelevant to my Lumbee recognition work. Um, as a Southern woman this has, in particular this week, come up in my world view. Um, there's something about Southern women and the way we are perceived by the world, and as a lawyer, particularly in the field I'm in, I often come up against men who—this actually occurred to me once. I worked with someone extensively by telephone, and when I met them in person, the look on his face was sheer astoundment. He was astounded at meeting me because I don't look like I sound on the phone. And, my Southern accent, for whatever reason, it belies my assertiveness. And that has impacted my career. I've had to learn how not to end sentences with question marks, that are affirmative statements, as a woman and as a Southerner. Um, that was very hard for me, and sometimes I'm not great at it. Still. But on the upside is I give a serious deposition because I'm Southern, and I'm kind by tone, and people wanna tell me things, and they don't see me as a threat. They don't perceive me as a threat when they're talking to me. That's very good in negotiations and depositions. And so I think that's true for any woman. It's always the issue. But as a Southern woman in particular, it's impacted my career quite a bit because I am underestimated frequently, because of how I sound, where I'm from, um, it's worked out.

Brooks: You've used it to your advantage?

McMillan Nakai: I have. People wanna tell me things that they should maybe not tell me. [Brooks laughs]. Sometimes, on occasion that's happened [laughs]. Um, because I'm Southern. But yeah, the very astounded gentleman believed I was blonde and five foot two. I'm not. [Brooks laughs] So there's that. And it can be a shock to people when they—it's interesting. So.

Brooks: Great. Okay, well, I'm ready to wrap up if you are.

McMillan Nakai: I am. Thank you very much.

Brooks: Okay, great. Thank you.

**[00:54:31] [End of SHEOH\_019\_02] [End of Interview]**